

THE TAKEOVER PANEL

CODE COMMITTEE

Terms of Reference

1. Establishment

1.1 The Panel hereby establishes a committee of the Panel, to be known as the Code Committee (the “Committee”).

1.2 The Panel hereby delegates certain functions (as set out in paragraph 2 below) to the Committee.

2. Purpose and functions of the Committee

The functions conferred by the Panel on the Committee are as follows:

2.1 to exercise the rule-making functions of the Panel and, consequently, to keep the Code (other than those matters set out in sections 1, 2(a) and (b), 4(a), (b) and (c), 5, 7, 8, 13, 14, 15 and 16 of the Introduction to the Code (the “Excluded Matters”)) under review in order to establish whether and when amendments need to be made;

2.2 acting on its own initiative or as a result of proposals from the Panel or the Executive, to formulate and make such proposals for amendments to the Code (other than the Excluded Matters) as it considers necessary or appropriate;

2.3 in accordance with paragraph 6 below, to consult on proposed amendments to the Code (other than the Excluded Matters) and to respond to such consultation with the Committee’s conclusions;

- 2.4 to adopt and amend, as it considers necessary or appropriate, the Code (other than the Excluded Matters);
- 2.5 in consultation with the Hearings Committee, to propose and adopt the Rules of Procedure of the Hearings Committee and to propose, consult on (in accordance with paragraph 6 below) and adopt such amendments to those Rules as the Committee considers necessary or appropriate;
- 2.6 to undertake the formalities relating to publication and certification of rules and amendments to rules referred to at paragraph 7 below; and
- 2.7 to do anything that it considers necessary or expedient for the purposes of, or in connection with, its functions.

The Panel shall provide the Committee with such resources as it needs to carry out its functions. In performing each of the functions described above, the Committee shall liaise with and receive assistance from the Panel and the Executive.

For the avoidance of doubt, the Committee shall not exercise rule-making functions set out in sub-paragraphs 2.1 to 2.7 above in respect of proposed amendments to the Excluded Matters, or in respect of rules adopted or to be adopted in relation to Panel fees or charges in accordance with relevant legislative requirements, which functions shall be performed by the Panel.

3. Composition of the Committee

- 3.1 The members of the Committee shall be those members of the Panel designated by the Panel to sit as members of the Committee. The Panel may appoint designated alternates for such members of the Committee. One designated alternate may act as a member of the Committee in a relevant member's place when he or she is unavailable.

- 3.2 The number of members of the Committee shall be determined by the Panel from time to time, provided that at no time shall there be more than twelve nor less than five members of the Committee.
- 3.3 The members of the Committee shall appoint the Chairman of the Committee (the “Chairman”).
- 3.4 The terms of appointment of each member of the Committee (and their designated alternates), including tenure, resignation and removal, shall be governed by the terms of their appointment to the Panel.
- 3.5 No past or current member (or designated alternate of a member) of the Committee may serve as a member (or a designated alternate of a member) of the Hearings Committee or as a member of the Takeover Appeal Board.
- 3.6 The membership of the Committee (and their designated alternates) shall be made available on the Panel’s website (www.thetakeoverpanel.org.uk).
- 3.7 The validity of any acts or proceedings of the Committee shall not be affected by any vacancy among the membership of the Committee or by any defect in the appointment of any Committee member (or designated alternate).

4. Meetings of the Committee

- 4.1 The Chairman may, at his discretion, convene meetings of the members of the Committee at such time and in such a manner as he considers appropriate in order to conduct any matters that fall within its functions. The Chairman shall determine, from time to time, the applicable procedures by which the business of the Committee shall be conducted.

5. Authority

Without prejudice to the generality of the authority conferred upon the Committee necessary for the purpose of fulfilling its functions as set out in paragraph 2 above, the Panel confers the following authorities:

- 5.1 the Chairman is hereby authorised by the Panel, subject to these Terms of Reference (in particular, paragraph 6 below), to establish procedures for the performance of the Committee's functions and to vary or amend any such procedures from time to time, as he or she sees fit;
- 5.2 the Committee is hereby authorised by the Panel to request any information it reasonably requires from any member of the Panel, or any officer or employee (including secondees) of the Panel, in connection with the performance of its functions, other than information on confidential matters relating to any ongoing case, transaction or other matter;
- 5.3 the Committee is hereby authorised by the Panel to obtain external legal or other independent professional advice and to secure the attendance at its meetings of third parties with the relevant experience and expertise if it considers this to be necessary for the fulfilment of its functions, at the Panel's expense;
- 5.4 the Chairman is hereby authorised by the Panel to sign a certificate in accordance with paragraph 7.3 below in the manner prescribed in relevant legislation; and
- 5.5 the Committee may confer upon the Chairman the authority to act on its behalf in circumstances specified by the Committee.

6. Consultation Procedures

- 6.1 The Committee shall follow the following procedures when conducting consultations on proposed amendments to the Code (other than the Excluded Matters) and the Rules of Procedure of the Hearings Committee.
- 6.2 The Committee may undertake informal consultation with any person prior to the written consultation period, where the Committee considers this is necessary or desirable.
- 6.3 Once the Committee has decided, subject to paragraph 6.4 below, that a particular matter should be put out to written consultation, it shall prepare and publish (in a manner that it considers appropriate), a Public Consultation Paper (“PCP”) by which to seek the views of relevant interested parties (including the Department for Business, Innovation and Skills) and those whom the policy will be likely to affect. The PCP should set out the background to, reasons for and (where available) the full text of the proposed amendments, together with a brief description of the perceived advantages and (if any) disadvantages of implementation of such proposals. The PCP should set out clearly the areas of policy on which the Committee is seeking views. The PCP shall state the deadline for responses and to whom the responses should be sent.
- 6.4 The Committee may dispense with written consultation in the following circumstances:
- (a) in certain exceptional cases where the Committee considers it necessary to amend the Code more quickly than the usual public consultation process would permit, including as a result of market developments; or

- (b) where the proposed amendments either do not materially alter the effect of the provision in question or are consequential upon changes to relevant legislation or regulatory requirements.

In such cases, the Committee may publish the amendments with immediate effect. In cases falling within paragraph 6.4(a) above, the Committee shall, in due course, prepare and publish a PCP seeking views on the amendments. The amendments may later be modified or removed, as the Committee considers necessary or appropriate, depending on the Committee's conclusions following the consultation process.

- 6.5 The Committee shall set a consultation period in relation to a PCP which may vary depending on the complexity of the subject, but will usually be between one and two months. Where re-consultation takes place on the basis of amendments made in the light of an earlier consultation, the Committee may adopt a shorter period for consultation.
- 6.6 The Committee shall, after the expiry of the consultation period, publish a Response Statement ("RS"). The RS shall set out the Committee's conclusions on the proposed amendments (taking into account the responses received to the PCP to the extent that the Committee considers appropriate). The RS shall also set out the final Code amendments.
- 6.7 The Committee shall, for information purposes, make available for public inspection, for a minimum period of three months following the publication of the RS, the responses it has received to its PCP, unless individual responses were provided in confidence or disclosure would prejudice third parties.
- 6.8 The Committee shall make available copies of PCPs and RSs on the Panel's website.

7. Formalities, Publication and Certification Procedures

- 7.1 As required by the relevant legislation, any rules made by the Committee must be made by an instrument in writing.
- 7.2 Where the Committee adopts rules or makes amendments to rules, it shall, in accordance with legislative requirements, make the text available to the public, normally by publishing the instrument containing the rules on the Panel's website.
- 7.3 The instrument containing the rules shall subsequently be endorsed with a certificate signed by the Chairman stating:
- (a) that the instrument was made by the Panel, acting through the Committee;
 - (b) that the copy is a true copy of the instrument; and
 - (c) the date on which the text of the instrument was made available to the public in accordance with relevant legislative requirements.

Adopted by the Panel on 11 April 2006 and last amended on 20 January 2010.