

Direct line: +44 1481 752240
Direct email: frances.watson@ogier.com

Reference: FCW/jab

5 October 2012

By email: supportgroup@thetakeoverpanel.org.uk

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

Dear Sirs

Submission from the Guernsey Commercial Bar on Consultation Paper PCP 2012/3

I write on behalf of the Commercial Bar of Guernsey.

The Code Committee of the Takeover Panel has invited comments on a Public Consultation paper dated 5 July 2012 (PCP 2012/3) (the **PCP**) which sets out proposed amendments (as discussed below) to the Takeover Code (the **Code**). Set out below are our responses to relevant questions of the PCP.

Q1: Do you agree that the residency test should be removed from the Code?

We consider that there are good reasons for removing the residency test. In particular, we agree with the Code Committee's conclusion at 2.10(c) of the PCP that the application of the Code should be capable of being easily verified by reference to public information.

Subject to the points below, we are supportive of these proposals.

Companies listed on non-EEA exchanges

Although the majority of Guernsey listed companies are listed on exchanges within the EEA (notably the UK and the Channel Islands), as an international finance centre, there is an increasing focus on Guernsey companies being listed on exchanges outside of the EEA. For those companies, we would suggest that investors would expect the protection from the rules of such exchanges (rather than Code protection). Accordingly, we would hope that the Panel would consider whether it was appropriate to carve out from the application of the Code those companies listed on appropriately regulated markets.

Ogier
Ogier House
St Julian's Avenue
St Peter Port
Guernsey GY1 1WA

T +44 1481 721672
F +44 1481 721575

www.ogier.com

Partners
Caroline Chan
Simon Davies
Marcus Leese
Roger Le Tissier
William Simpson
Frances Watson

Consultant
Nick Gamble
(Admitted as a Solicitor in England and Wales)

The alternative would be to seek appropriate derogations on a case by case basis. Whilst we appreciate that this may be of assistance in certain circumstances, our concern would be that this might cut across the intention for transparency as to the applicability of the Code by reference to publicly available information.

Practical implications

We anticipate that there will be a number of Guernsey companies and their shareholders which will be affected by the implementation of these proposals (such as issuing updated offering memoranda to advise shareholders of the consequences of the changes and amending constitutional documents which currently entrench "takeover code" like provisions to protect shareholders (requiring a circular to shareholders and EGM)). Accordingly, we consider it important that sufficient "lead in" time is generated with respect to these proposals becoming effective to enable such arrangements to be reviewed. We would also hope that the Panel would consider appropriate derogations, should there be a pressing circumstances for particular companies.

Amendment to existing section 3(a)(ii)(D) of the Introduction to the Code

We welcome the clarificatory language proposed by the Code Committee to this section. In line with the aim of ensuring that the application of the Code is clear from publicly available sources, we would also suggest that this section is amended to read "they filed on a publicly available record a prospectus....."

This wording is proposed to ensure, for the avoidance of doubt, that filings which are made with the Guernsey Financial Services Commission in connection with Guernsey regulatory requirements and which are not otherwise publicly available are not caught.

Q2: Do you agree that the residency test should not be retained in relation to offers for certain categories of company?

Please see our response to Q1 above.

Q3: Do you have any comments on the proposed amendments to sections 3(a)(i) and (ii) of the Introduction to the Code?

Please see our response to Q1 above.

Q4: Do you have any comments on the proposed amendments to the ten year rule and the introduction of a new definition of "multilateral trading facility"?

Please see our response to Q1 above.

Q5: Do you have any comments on the proposed consequential amendments to the Code set out in Appendix B?

Please see our response to Q1 above.

Please do not hesitate to contact me if you have any queries.

Kind regards.

Yours faithfully,

P.P. [Signature] for

Frances Watson
For and on behalf of
The Guernsey Commercial Bar