

THE TAKEOVER PANEL

THE CODE COMMITTEE

PROCEDURES FOR AMENDING THE TAKEOVER CODE

1. Introduction

This note explains the practical procedures the Code Committee has adopted for considering and consulting on proposals for amendments to the Takeover Code (the “**Code**”) in carrying out its rule-making functions as set out in its Terms of Reference.

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

- 1.1 first, non-urgent amendments, which may be identified by the Executive in the course of its work as a result of non time-critical market developments or case history, or which may arise from: a request from the Panel or one of its members; an initiative of the Code Committee; or representations from third parties (such as shareholders). These amendments will be subject to full consultation (see section 2 below);
- 1.2 secondly, urgent amendments which may arise in certain exceptional cases, for example, in the event that market developments, representations received, the facts of a particular case or other circumstances give rise to the need for amendments to the Code on an expedited basis. The Code Committee may announce such amendments by way of a public statement. Such amendments will usually have immediate effect but will subsequently be subject to a full consultation (see section 3 below); and

- 1.3 thirdly, minor or consequential amendments to the Code, which the Code Committee may announce without consultation. Such changes may be made with immediate effect (see section 4 below).

2. **Non-urgent amendments to the Code**

- 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 or the Code Committee itself or at the request of third parties.

- 2.2 The typical consultation procedure for proposed amendments is described below:

- 2.2.1 Whenever an issue which might possibly lead to a Code amendment is identified, whether by the Executive, the Code Committee, the Panel or a third party, 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.

As part of this exercise, the Executive will 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.

The discussion paper prepared by the Executive for the Code Committee will typically include: an analysis of the Executive's existing policy on the relevant issue; a report on the findings of any pre-consultation; 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 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.

2.2.2 If, following consideration of any discussion paper prepared by the Executive under paragraph 2.2.1 above, the Code Committee concludes that there is a case for amending the Code, it will normally ask the Executive to prepare a formal public consultation paper ("**PCP**"). The PCP will take account of any views received as a result of the informal consultation exercise described in paragraph 2.2.1 above.

2.2.3 PCPs will normally have a standard format setting out the following information:

- (a) an executive summary;
- (b) the text of the proposed amendments (together with any consequential amendments);

- (c) the background to and reasons for the proposed amendments, including, if appropriate, a discussion of any alternative solutions considered;
- (d) the effect of the proposed amendments;
- (e) 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
- (f) a list of persons involved in informal pre-consultation (unless they request otherwise).

2.2.4 In some circumstances, the Code Committee may decide that it would prefer to consult publicly on the question in hand before drafting possible Code amendments. In such cases, the format of the PCP will not strictly follow that described in paragraph 2.2.3. 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.

2.2.5 Once approved by the Code Committee, the PCP will be published.

2.2.6 Upon publication of the PCP, the Code Committee will:

- (a) make the PCP available for access 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 body with whom informal consultation has been held under paragraph 2.2.1 above.

2.2.7 The consultation period for amendments will vary depending on the complexity of the subject but will usually be between one and two months. It is the Panel's policy to make responses to formal consultation received in written form available for public inspection, unless the respondent requests otherwise.

2.2.8 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.

2.2.9 Once the Code Committee has completed its consideration of the responses to the consultation exercise (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).

2.2.10 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).

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.

2.2.11 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 rationale for the amendments.

3. **Urgent amendments to the Code**

- 3.1 In certain exceptional cases, it may be necessary to effect changes to the Code on an expedited basis and without recourse to external consultation. For example, this might be the case where, in the opinion of the Code Committee, market developments or the market sensitivity of the proposed change or the need to rectify a loophole in the Code dictate that an amendment should be made more quickly than a full consultation process would allow. Historically, however, the need to implement amendments to the Code on this basis in the manner described below has been limited.
- 3.2 In the event that the need for an urgent rule change is identified, the Executive will normally prepare a briefing paper 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 up immediately by a full consultation process on the

amendment as described in section 2.2. The amendment may be modified as a result, or removed altogether, depending on the outcome of the consultation process. New pages to the Code will be issued, if appropriate, following this consultation process.

4. **Minor and consequential amendments to the Code**

- 4.1 The Code Committee may also make amendments to the Code without consultation where, in the opinion of the Code Committee, changes either do not materially alter the effect of the provision in question or are consequential upon 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 formal consultation paper will be prepared subsequently. However the amendments will be made public before the date on which they will come into effect wherever practicable. New pages to the Code will be issued shortly before the amendments take effect.

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