

PCP 2018/2 5 November 2018

# **THE TAKEOVER PANEL**

## **PUBLIC CONSULTATION PAPER BY THE CODE COMMITTEE OF THE PANEL**

### **THE UNITED KINGDOM'S WITHDRAWAL FROM THE EUROPEAN UNION**



The Code Committee of the Takeover Panel (the “**Panel**”) invites comments on this Public Consultation Paper. Comments should reach the Code Committee by Monday, 17 December 2018.

Comments may be sent by email to:

[supportgroup@thetakeoverpanel.org.uk](mailto:supportgroup@thetakeoverpanel.org.uk)

Alternatively, please send comments in writing to:

The Secretary to the Code Committee

The Takeover Panel

10 Paternoster Square

London

EC4M 7DY

Telephone: +44 (0) 20 7382 9026

All responses to formal consultation will be made available for public inspection and published on the Panel’s website at [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk), unless the respondent explicitly requests otherwise. A standard confidentiality statement in an email message will not be regarded as a request for non-disclosure. Personal information, such as telephone numbers or email addresses, will not be edited from responses.

Unless the context otherwise requires, words and expressions defined in the Takeover Code have the same meanings when used in this Public Consultation Paper.

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## 1. Introduction and summary

### (a) Introduction

1.1 In this Public Consultation Paper (“**PCP**”), the Code Committee of the Takeover Panel (the “**Code Committee**”) proposes amendments to the Takeover Code (the “**Code**”) in relation to the withdrawal of the United Kingdom (the “**UK**”) from the European Union (the “**EU**”).

### (b) Summary

#### (i) Legislative framework

1.2 Section 2 of this PCP describes the legislative framework within which the Code currently operates and the changes which will be made to that framework as a result of the UK’s withdrawal from the EU.

1.3 In summary, Directive 2004/25/EC on Takeover Bids<sup>1</sup> (the “**Takeovers Directive**”) will cease to apply in the UK and section 943(1) of the Companies Act 2006<sup>2</sup> (the “**Act**”), which requires the Panel to make rules giving effect to certain Articles of the Takeovers Directive, will be amended to require the Panel to make rules in accordance with a new Schedule 1C to the Act (which will replicate the relevant requirements of the Directive). This amendment, and certain other amendments to the Act, will be made by The Takeovers (Amendment) (EU Exit) Regulations 2019<sup>3</sup> (the “**Takeovers (EU Exit) Regulations**”).

1.4 The Takeovers (EU Exit) Regulations are set out in **Appendix A** and the amendments which those Regulations will make to Part 1 of Chapter 28 of the Act are set out in **Appendix B**.

#### (ii) Shared jurisdiction

1.5 Section 3 of this PCP explains the implications of the Takeover Directive’s shared jurisdiction regime ceasing to apply in the UK.

1.6 The shared jurisdiction regime currently applies to offers for companies which have their registered office in one Member State of the European Economic Area (the “**EEA**”) and their securities admitted to trading on a regulated market in another EEA Member State

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<sup>1</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0025>

<sup>2</sup> <http://www.legislation.gov.uk/ukpga/2006/46/contents>

<sup>3</sup> <http://www.legislation.gov.uk/ukdsi/2019/9780111174180/contents> (superseding draft published on 30 October 2018)

- (but not also on a regulated market in the EEA Member State in which the company has its registered office).
- 1.7 Section 3 of this PCP proposes the deletion of section 3(a)(iii) (*Shared jurisdiction*) of the Introduction to the Code, which sets out the rules as to the offers for shared jurisdiction companies to which the Code applies.
- 1.8 Upon the deletion of section 3(a)(iii) of the Introduction, the Code would no longer apply to an offer for:
- (a) a company which has its registered office in an EEA Member State (i.e. not in the UK) and whose securities are admitted to trading on a regulated market in the UK (but not in that EEA Member State); or
  - (b) a company which has its registered office in the UK and whose securities are admitted to trading on a regulated market in an EEA Member State (and not on a regulated market in the UK) and which does not satisfy the “residency test” in section 3(a)(ii) of the Introduction to the Code.
- 1.9 The Code would, however, then apply (in full) to an offer for a company which has its registered office in the UK and whose securities are admitted to trading on a regulated market in an EEA Member State (but not on a regulated market in the UK) if that company satisfies the residency test in section 3(a)(ii) of the Introduction to the Code.
- 1.10 Details of the shared jurisdiction companies to which the Code currently applies are set out in **Appendix C**.
- (iii) *The Introduction to the Code*
- 1.11 Section 4 of this PCP describes the amendments proposed to be made to the Introduction to the Code (in addition to the deletion of section 3(a)(iii) of the Introduction) and related amendments to the definitions of “**regulated market**”, “**multilateral trading facility**” and “**shares or securities**” in the Definitions Section of the Code.
- 1.12 Section 4 also explains that the Panel Executive (the “**Executive**”) will withdraw Practice Statement No 18 (*Cross-Border Mergers*) once it will no longer be possible to effect a statutory merger between a UK company and an EEA Member State company under The Companies (Cross-Border Mergers) Regulations 2007.

(iv) *The General Principles*

1.13 Section 5 of this PCP sets out certain minor amendments proposed to be made to the General Principles of the Code.

1.14 The General Principles of the Code are currently the same as those in Articles 3.1(a) to (f) of the Takeovers Directive. Those Articles will, pursuant to the Takeovers (EU Exit) Regulations, be replaced by paragraphs 1 to 6 of the new Schedule 1C to the Act. Although the substance of the general principles in the new Schedule 1C to the Act is the same as that of the General Principles of the Code, there are some minor drafting and formatting differences. The Code Committee proposes to amend the General Principles of the Code so that they will be the same as the general principles in Schedule 1C to the Act.

(v) *The Rules and Appendices of the Code*

1.15 Section 6 of this PCP proposes that the references in the Code to “**Phase 2 European Commission proceedings**” should be retained following the UK’s withdrawal from the EU.

1.16 Section 6 also sets out the amendments proposed to be made to the Rules and Appendices of the Code, including a proposal that the requirement in Rule 30.4 that documents, announcements and information should be made available to shareholders and employees in the EEA should be amended so as to refer to shareholders and employees in the UK, the Channel Islands and the Isle of Man.

(vi) *Assessment of the impact of the proposals*

1.17 Section 7 of this PCP provides an assessment of the impact of the proposals.

(c) *Invitation to comment*

1.18 The Code Committee invites comments on the amendments to the Code proposed in this PCP. Comments should reach the Code Committee by Monday, 17 December 2018 and should be sent in the manner set out at the beginning of this PCP.

1.19 The proposed amendments to the Code are set out in **Appendix D**. Where amendments are proposed, underlining indicates proposed new text and striking-through indicates text that is proposed to be deleted.

1.20 A list of the questions that are put for consultation is set out in **Appendix E**.

**(d) Implementation**

- 1.21 As at the date of this PCP, the EU and the UK are in the process of negotiating a draft agreement on the withdrawal of the UK from the EU and the European Atomic Energy Community (the “**Withdrawal Agreement**”).
- 1.22 The draft of the Withdrawal Agreement published on 19 March 2018<sup>4</sup> provides for a transition period from the date of the UK’s withdrawal from the EU until 31 December 2020, during which period EU law would continue to be applicable to and in the UK. If such a transition period is agreed in the final version of the Withdrawal Agreement (and the Withdrawal Agreement receives the necessary Parliamentary approvals) then, subject to any other arrangements agreed between the EU and the UK during the transition period, the amendments to the Code set out in this PCP will come into effect following the end of the transition period.
- 1.23 However, if the UK withdraws from the EU in a “no deal” scenario (i.e. without a Withdrawal Agreement including a transition period having been agreed), then the amendments to the Code set out in this PCP will come into effect at 11.00pm on 29 March 2019, in accordance with the notification under Article 50 of the Treaty on European Union of the UK’s decision to withdraw from the EU dated 29 March 2017<sup>5</sup> (the “**Article 50 Notification**”). The Code Committee intends to publish the final amendments to the Code ahead of that date.
- 1.24 The arrangements which will apply to an offer for a shared jurisdiction company which is on-going as at the date on which section 3(a)(iii) of the Introduction to the Code is deleted are described in Section 3 of this PCP.
- 1.25 Where parties have any doubt as to the consequences of the amendments to the Code proposed in this PCP, in particular the impact on any transaction which is in existence or contemplation, they should consult the Executive prior to the date on which the amendments are due to come into effect to obtain a ruling or guidance.

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<sup>4</sup> <https://www.gov.uk/government/publications/draft-withdrawal-agreement-19-march-2018>

<sup>5</sup> <https://www.gov.uk/government/publications/prime-ministers-letter-to-donald-tusk-triggering-article-50>

## 2. Background and legislative framework

### (a) *Introduction*

2.1 Section 2 of this PCP describes the legislative framework within which the Code currently operates and the changes which will be made to that framework as a result of the UK's withdrawal from the EU. Those changes form the basis for most of the amendments to the Code which are proposed in the subsequent sections of this PCP.

### (b) *The Takeovers Directive*

2.2 The Takeovers Directive was required to be implemented into the national law of the Member States of the EEA on 20 May 2006. Article 1.1 of the Takeovers Directive summarises its scope as follows:

“This Directive lays down measures coordinating the laws, regulations, administrative provisions, codes of practice and other arrangements of the Member States, including arrangements established by organisations officially authorised to regulate the markets (hereinafter referred to as ‘rules’), relating to takeover bids for the securities of companies governed by the laws of Member States, where all or some of those securities are admitted to trading on a regulated market ...”.

2.3 Subject to the terms of any Withdrawal Agreement, the Takeovers Directive will cease to apply in the UK upon the UK's withdrawal from the EU.

### (c) *The Companies Act 2006*

2.4 The Takeovers Directive has been implemented in the UK by Part 28 of the Act<sup>6</sup>. As part of the implementation of the Takeovers Directive, the Panel was designated as the supervisory authority to carry out certain regulatory functions in relation to takeovers in the UK pursuant to the Directive. Chapter 1 of Part 28 of the Act concerns the Panel and sets out the Panel's statutory functions. Chapters 2 to 4 of Part 28 of the Act implement aspects of the Takeovers Directive that do not concern the Panel.

2.5 Paragraphs 1174 and 1176 of the Explanatory Notes to the Act<sup>7</sup> set out a summary of and background to Chapter 1 of Part 28 of the Act, as follows:

“**1174.** Since 1968, takeover regulation in the UK has been overseen by the Panel on Takeovers and Mergers (“the Panel”) which administered rules and

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<sup>6</sup> The Takeovers Directive was initially implemented by [The Takeovers Directive \(Interim Implementation\) Regulations 2006 \(SI 2006/1183\)](#). Those Regulations were superseded by Part 28 of the Act on 6 April 2007.

<sup>7</sup> <http://www.legislation.gov.uk/ukpga/2006/46/notes/contents>

principles contained in the non-statutory City Code on Takeovers and Mergers. In order to bring UK takeover regulation within the requirements laid down in the Takeovers Directive, Chapter 1 places it within a statutory framework.

...

**1176.** Principally, the Panel is placed under an obligation to make statutory rules giving effect to certain Articles of the Directive. It is also given a statutory rule-making power to make rules in relation to takeover activity and similar types of transactions, reflecting the current field of activity over which the existing Code lays down rules.”.

2.6 Paragraph 1182 of the Explanatory Notes summarises section 943 of the Act, as follows:

**“1182.** The Panel is given the power to make rules in relation to takeover regulation. The rule-making power is broadly drawn to ensure that the Panel can continue to make rules on the range of matters presently regulated by the City Code on Takeovers and Mergers. The following provisions are included:

- (a) The Panel is placed under an obligation to make rules as required by specified Articles of the Takeovers Directive. These are the general principles (Article 3.1 of the Directive), jurisdictional rules (Article 4.2), matters related to the protection of minority shareholders, mandatory bid and equitable price (Article 5), contents of the bid documentation (Article 6.1 to 6.3), time allowed for acceptance of a bid and publication of a bid (Articles 7 and 8), obligations of the management of the target company (Article 9) and other rules applicable to the conduct of bids (Article 13). ... The Panel’s rules will not, however, deal with certain matters contained in the Directive such as barriers to takeovers (Article 11), squeeze-out and sell-out (Articles 15 and 16), and information to be published by companies in their annual reports (Article 10) which are more appropriately dealt with in company legislation (and are the subject of further provision at Chapters 2, 3 and 4 of this Part).
- (b) The Panel is permitted to make rules on takeover bids (including, but not limited to, those which are the subject of the Directive), mergers and other transactions affecting the ownership or control of companies. The power is designed to be broad enough to cover the existing scope of the Code and sufficiently flexible to take account of future market developments. Types of matters currently covered by the Code but not covered by the Directive include the takeovers of companies not traded on a regulated market and transactions involving a change of control of a like nature to takeovers.”.

**(d) *The Takeover Code***

2.7 The Panel’s obligation to make rules as required by the Articles of the Takeovers Directive referred to in section 943(1) of the Act was satisfied by amendments which were made to the Code on 20 May 2006. The proposed amendments were consulted on

in PCP 2005/5 (*The Implementation of the Takeovers Directive*)<sup>8</sup>, which was published on 18 November 2005. The Panel's response to the consultation and the final amendments to the Code were set out in RS 2005/5<sup>9</sup>, which was published on 21 April 2006.

**(e) Jersey, Guernsey and the Isle of Man**

2.8 On 1 July 2009, further amendments were made to the Code to reflect the adoption of a statutory framework for the regulation of takeovers in Jersey, Guernsey and the Isle of Man. In summary:

- (a) the Panel has been appointed by the Companies (Appointment of Takeovers and Mergers Panel) (Jersey) Order 2009 made under Article 2 of the Companies (Takeovers and Mergers Panel) (Jersey) Law 2009 (the "**Jersey Law**") to carry out certain regulatory functions in relation to takeovers and mergers under Jersey law;
- (b) the Panel has been appointed under the Companies (Guernsey) Law, 2008 (the "**Guernsey Law**") to carry out certain regulatory functions in relation to takeovers and mergers under Guernsey law; and
- (c) Chapter 1 of Part 28 of the Act has been extended to the Isle of Man with certain modifications by The Companies Act 2006 (Extension of Takeover Panel Provisions) (Isle of Man) Order 2008 (as amended by The Companies Act 2006 (Extension of Takeover Provisions) (Isle of Man) Order 2009).

Links to the relevant legislation can be found on the "Legislative Basis" page of the Panel's website<sup>10</sup>.

**(f) Notification under Article 50 of the Treaty on European Union**

2.9 On 29 March 2017, the Prime Minister notified the European Council of the UK's decision to withdraw from the EU under Article 50 of the Treaty on European Union. Accordingly, the UK will cease to be a Member State of the EU on 29 March 2019.

**(g) The European Union (Withdrawal) Act 2018**

2.10 On 26 June 2018, the European Union (Withdrawal) Act 2018<sup>11</sup> (the "**EUWA**") was

<sup>8</sup> <http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/pcp200505.pdf>

<sup>9</sup> <http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/rs200505.pdf>

<sup>10</sup> <http://www.thetakeoverpanel.org.uk/structure/legislative-basis>

passed into law. The Explanatory Notes to the EUWA<sup>12</sup> state that it:

“... ends the supremacy of European Union (EU) law in the UK and converts EU law as it stands at the moment of exit into domestic law. It also creates temporary powers to make secondary legislation to enable corrections to be made to the laws that would otherwise no longer operate appropriately once the UK has left, so that the domestic legal system continues to function correctly outside the EU. ...”.

**(h) The Takeovers (Amendment) (EU Exit) Regulations 2019**

2.11 The Takeovers (EU Exit) Regulations were published on 2 November 2018. In exercise of the powers conferred on the Secretary of State by section 8(1) of, and paragraph 21 of Schedule 7 to, the EUWA, the Takeovers (EU Exit) Regulations will make certain amendments to Part 28 of the Act (and certain other amendments). For ease of reference, the Takeovers (EU Exit) Regulations are set out in **Appendix A**.

2.12 Regulation 3(a) of the Takeovers (EU Exit) Regulations will delete the current section 943(1) of the Act, which requires the Panel to make rules giving effect to Articles 3.1, 4.2, 5, 6.1 to 6.3, 7 to 9 and 13 of the Takeovers Directive, and insert a new section 943(1), as follows:

“(1) The Panel must make rules—

(a) giving effect to the general principles in Part 1 of Schedule 1C, and

(b) in accordance with Part 2 of that Schedule.”.

2.13 Regulations 3(b) to (d), 4, 5 and 6 of the Takeovers (EU Exit) Regulations will make certain other amendments to, respectively, sections 943, 948, 950 and 953 of the Act. For ease of reference, the amendments which will be made to Chapter 1 of Part 28 of the Act by the Takeovers (EU Exit) Regulations are set out in **Appendix B**.

2.14 Regulation 14 of the Takeovers (EU Exit) Regulations will insert a new Schedule 1C into the Act, as set out in the Schedule to the Regulations. In effect:

- (a) the general principles in Article 3.1 of the Takeovers Directive will be set out in Part 1 of the new Schedule 1C to the Act; and
- (b) provisions equivalent to Articles 5, 6.1 to 6.3, 7 to 9 and 13 of the Takeovers

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<sup>11</sup> <http://www.legislation.gov.uk/ukpga/2018/16/contents/enacted>

<sup>12</sup> <http://www.legislation.gov.uk/ukpga/2018/16/notes/division/1/index.htm>

Directive will be set out in Part 2 of the new Schedule 1C.

2.15 Provisions equivalent to Article 4.2 of the Takeovers Directive, which sets out the rules as to which authorities supervise which takeover bids, will not, however, be set out in Schedule 1C to the Act. In summary, Articles 4.2(b) to (e) of the Takeovers Directive provide that, if a takeover bid is made for a company which:

- (a) has its registered office in one EEA Member State; and
- (b) has its securities admitted to trading on a regulated market in another EEA Member State (and not on a regulated market in the EEA Member State in which it has its registered office),

then certain matters will be regulated by the supervisory authority for takeovers in the EEA Member State where the relevant regulated market is located and other matters will be regulated by the supervisory authority for takeovers in the EEA Member State in which the company has its registered office. This arrangement, whereby two supervisory authorities in different EEA Member States regulate different aspects of the same takeover bid pursuant to Article 4.2 of the Takeovers Directive, is referred to in this PCP as the Directive's "**shared jurisdiction regime**".

2.16 Section 3 of this PCP proposes that, upon the Takeovers (EU Exit) Regulations coming into force, section 3(a)(iii) of the Introduction to the Code, which implements the shared jurisdiction regime in the UK, should be deleted.

2.17 Sections 4, 5 and 6 of this PCP propose certain other amendments which will be required to be made to Code's Introduction, General Principles, Rules, Notes and Appendices in order to implement the Takeovers (EU Exit) Regulations, or which will otherwise be made in relation to the UK's withdrawal from the EU. Given that the provisions of the new Schedule 1C to the Act are, in substance, the same as the provisions of the Articles of the Takeovers Directive (other than Article 4.2) currently referred to in section 943(1) of the Act, the amendments to the Code proposed in Sections 4, 5 and 6 of this PCP are mostly of a minor and technical nature.

*(i) **Legislative amendments in Jersey, Guernsey and the Isle of Man***

2.18 Jersey, Guernsey and the Isle of Man are not Member States of the EU or the EEA. However, the Jersey Law, the Guernsey Law and the Act (as it applies in the Isle of Man) will need to be amended as a result of the UK's withdrawal from the EU. The Code Committee expects that any consequential amendments to sections 14, 15 and 16 of the

Introduction to the Code will be made by the Panel in due course, without formal consultation.

**(j) *The Withdrawal Agreement and the European Union (Withdrawal Agreement) Bill***

2.19 The UK and the EU have been negotiating the terms of the Withdrawal Agreement since 2017. In November 2017, the Government announced its intention to introduce the European Union (Withdrawal Agreement) Bill, the primary purpose of which would be to implement the Withdrawal Agreement into UK law. On 24 July 2018, the Department for Exiting the European Union published a White Paper in relation to the proposed Bill<sup>13</sup>. This confirmed that the Bill will only be introduced once Parliament has approved the final deal under the terms of the EUWA.

2.20 Article 121 of the draft Withdrawal Agreement published on 19 March 2018 provided that:

“There shall be a transition or implementation period, which shall start on the date of entry into force of this Agreement and end on 31 December 2020.”.

2.21 Article 122(1) of the draft Withdrawal Agreement provided that:

“Unless otherwise provided in this Agreement, Union law shall be applicable in the United Kingdom during the transition period.”.

2.22 If the transition period, and the application of EU law during the transition period, is agreed in the final Withdrawal Agreement (and the Withdrawal Agreement is approved by Parliament) then, subject to any other arrangements agreed between the EU and the UK during the transition period, the Takeovers Directive will continue to apply during and until the end of the transition period. The Code Committee understands that the Takeovers (EU Exit) Regulations and the amendments to the Code set out in this PCP would, therefore, not be required to come into effect until the transition period has come to an end.

**2.23** If, however, the UK withdraws from the EU in a “no deal” scenario, i.e. without the Withdrawal Agreement and the transition period having been agreed, then the Code Committee understands that the Takeovers (EU Exit) Regulations would come into effect at 11.00pm on 29 March 2019 (in accordance with the Article 50 Notification) and that the amendments to the Code set out in this PCP would, therefore, be required to come into effect at the same time.

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<sup>13</sup> <https://www.gov.uk/government/publications/legislating-for-the-withdrawal-agreement-between-the-united-kingdom-and-the-european-union>

### 3. Shared jurisdiction

#### (a) Introduction

3.1 Section 3 of this PCP proposes the deletion of section 3(a)(iii) (*Shared jurisdiction*) of the Introduction to the Code.

#### (b) Article 4.2 of the Takeovers Directive and section 943(1) of the Act

3.2 Article 4.2(a) of the Takeovers Directive provides for the situation where a company has its registered office and its securities admitted to trading on a “**regulated market**” in the same EEA Member State, as follows:

“(a) The authority competent to supervise a bid shall be that of the Member State in which the offeree company has its registered office if that company’s securities are admitted to trading on a regulated market in that Member State.”.

3.3 Articles 4.2(b) and 4.2(e) of the Takeovers Directive provide for the situation where a company has its registered office in one EEA Member State and its securities admitted to trading on a regulated market in another EEA Member State (and not on a regulated market in the EEA Member State in which it has its registered office) (a “**shared jurisdiction company**”) and explain which supervisory authority deals with which matters in the case of a takeover bid for such a shared jurisdiction company. They provide as follows:

“(b) If the offeree company’s securities are not admitted to trading on a regulated market in the Member State in which the company has its registered office, the authority competent to supervise the bid shall be that of the Member State on the regulated market of which the company’s securities are admitted to trading.

If the offeree company's securities are admitted to trading on regulated markets in more than one Member State, the authority competent to supervise the bid shall be that of the Member State on the regulated market of which the securities were first admitted to trading.

...

(e) In the cases referred to in (b) and (c), matters relating to the consideration offered in the case of a bid, in particular the price, and matters relating to the bid procedure, in particular the information on the offeror’s decision to make a bid, the contents of the offer document and the disclosure of the bid, shall be dealt with in accordance with the rules of the Member State of the competent authority. In matters relating to the information to be provided to the employees of the offeree company and in matters relating to company law, in particular the percentage of voting rights which confers control and any derogation from the obligation to launch a bid, as well as the conditions under

which the board of the offeree company may undertake any action which might result in the frustration of the bid, the applicable rules and the competent authority shall be those of the Member State in which the offeree company has its registered office.”.

- 3.4 Article 4.2(c) of the Takeovers Directive provides for a situation where a shared jurisdiction company’s securities were admitted to trading on regulated markets in more than one EEA Member State simultaneously, as follows:

“(c) If the offeree company’s securities were first admitted to trading on regulated markets in more than one Member State simultaneously, the offeree company shall determine which of the supervisory authorities of those Member States shall be the authority competent to supervise the bid by notifying those regulated markets and their supervisory authorities on the first day of trading.

If the offeree company’s securities have already been admitted to trading on regulated markets in more than one Member State on [20 May 2006] and were admitted simultaneously, the supervisory authorities of those Member States shall agree which one of them shall be the authority competent to supervise the bid within four weeks of [20 May 2006]. Otherwise, the offeree company shall determine which of those authorities shall be the competent authority on the first day of trading following that four-week period.”.

- 3.5 Article 4.2(d) of the Takeovers Directive provides that EEA Member States must ensure that the decisions referred to in Article 4.2(c) are made public.

- 3.6 Section 943(1) of the Act provides that the Panel must make rules giving effect to, amongst other Articles, Article 4.2 of the Takeovers Directive.

**(c) Section 3(a) of the Introduction to the Code**

- 3.7 Section 3 of the Introduction to the Code sets out the rules as to the companies, transactions and persons to which the Code applies.

- 3.8 In accordance with Article 4.2(a) of the Takeovers Directive, section 3(a)(i) of the Introduction to the Code provides that the Code applies to:

“offers ... for companies and Societas Europaea (and, where appropriate, statutory and chartered companies) which have their registered offices in the United Kingdom ... if any of their securities are admitted to trading on a regulated market ... in the United Kingdom ...”.

- 3.9 In addition, section 3(a)(i) of the Introduction provides that the Code also applies to offers for other companies which fall outside the scope of the Takeovers Directive, including offers for:

- (a) Channel Islands or Isle of Man registered companies whose securities are admitted to trading on a regulated market in the UK; and
  - (b) UK, Channel Islands or Isle of Man registered companies whose securities are admitted to trading on a **“multilateral trading facility”** (an **“MTF”**) in the UK (such as the London Stock Exchange’s AIM market) or on any stock exchange in the Channel Islands or the Isle of Man.
- 3.10 Section 3(a)(ii) of the Introduction to the Code provides that the Code applies to offers for certain other companies which do not fall within sections 3(a)(i) or (iii) of the Introduction (and which therefore fall outside the scope of the Takeovers Directive). In summary, these comprise offers for public companies, Societas Europaea, statutory companies and chartered companies (and certain private companies) which have their registered office in the UK, the Channel Islands or the Isle of Man and which are considered by the Panel to have their place of central management and control in the UK, the Channel Islands or the Isle of Man. The requirement for such a company to have its place of central management and control in the UK, the Channel Islands or the Isle of Man is referred to as the **“residency test”**.
- 3.11 Section 3(a)(iii) of the Introduction to the Code sets out the rules giving effect to Articles 4.2(b), (c), (d) and (e) of the Takeovers Directive, including the circumstances in which, and the extent to which, the Code will apply to a shared jurisdiction company (the **“shared jurisdiction rules”**), as follows:

**“3 COMPANIES, TRANSACTIONS AND PERSONS SUBJECT TO THE CODE**

This section (except for sections 3(d) and (e)) sets out the rules as to the companies, transactions and persons to which the Code applies.

**(a) Companies**

...

- (iii) Shared jurisdiction – UK and other EEA registered and traded companies

The Code also applies (to the extent described below) to offers for the following companies:

- (A) a company which has its registered office in the United Kingdom whose securities are admitted to trading on a regulated market in one or more member states of the European Economic Area but not on a regulated market in the United Kingdom;

- (B) a company which has its registered office in another member state of the European Economic Area whose securities are admitted to trading on a regulated market in the United Kingdom and not on a regulated market in any other member state of the European Economic Area; and
- (C) a company which has its registered office in another member state of the European Economic Area whose securities are admitted to trading on regulated markets in more than one member state of the European Economic Area including the United Kingdom, but not on a regulated market in the member state of the European Economic Area in which it has its registered office, if:
- (I) the securities of the company were first admitted to trading only in the United Kingdom; or
  - (II) the securities of the company are simultaneously admitted to trading on more than one regulated market on or after 20 May 2006, if the company notifies the Panel and the relevant regulatory authorities on the first day of trading that it has chosen the Panel to regulate it; or
  - (III) the Panel is the supervisory authority pursuant to the second paragraph of Article 4(2)(c) of the Directive.

A company referred to in paragraphs (C)(II) or (III) must notify a Regulatory Information Service of the selection of the Panel to regulate it without delay.

The provisions of the Code which will apply to such offers shall be determined by the Panel on the basis set out in Article 4(2)(e) of the Directive. In summary, this means that:

- in cases falling within paragraph (A) above, the Code will apply in respect of matters relating to the information to be provided to the employees of the offeree company and matters relating to company law (in particular the percentage of voting rights which confers control and any derogation from the obligation to launch an offer, as well as the conditions under which the board of the offeree company may undertake any action which might result in the frustration of an offer) ("**employee information and company law matters**"); in relation to matters relating to the consideration offered (in particular the price) and matters relating to the offer procedure (in particular the information on the offeror's decision to make an offer, the contents of the offer document and the disclosure of the offer) ("**consideration and procedural matters**"), the rules of the supervisory authority of the member state determined in accordance with Article 4(2)(b) and (c) of the Directive as the relevant supervisory authority will apply; and
- in cases falling within paragraphs (B) or (C) above, the Code will apply in respect of consideration and procedural matters; in relation to employee information and company law matters, the rules of the supervisory authority in the member state where the offeree company has its registered office will apply."

**(d) Transactions and companies to which the shared jurisdiction rules do and do not apply**

3.12 In general, the Code applies to a wide range of transactions. These are described in the first paragraph of section 3(b) (*Transactions*) of the Introduction to the Code, as follows:

“... the Code is concerned with regulating takeover bids and merger transactions of the relevant companies, however effected, including by means of statutory merger or scheme of arrangement (as defined in the Definitions Section). The Code is also concerned with regulating other transactions (including offers by a parent company for shares in its subsidiary, dual holding company transactions, new share issues, share capital reorganisations and offers to minority shareholders) which have as their objective or potential effect (directly or indirectly) obtaining or consolidating control of the relevant companies, as well as partial offers (including tender offers pursuant to Appendix 5) to shareholders for securities in the relevant companies. The Code also applies to unitisation proposals which are in competition with another transaction to which the Code applies.”.

3.13 However, in accordance with Article 4.2 of the Takeovers Directive, the shared jurisdiction rules apply only to a narrower range of transactions, i.e. those which fall within the definition of a “**takeover bid**” in Article 2.1(a) of the Takeovers Directive. Accordingly, the second paragraph of section 3(b) of the Introduction to the Code (which derives from Article 2.1(a) of the Takeovers Directive) provides as follows in relation to offers for shared jurisdiction companies which fall within section 3(a)(iii) of the Introduction:

“In cases falling within paragraph (a)(iii) above, “offers” means only any public offer (other than by the company itself) made to the holders of the company’s securities to acquire those securities (whether mandatory or voluntary) which follows or has as its objective the acquisition of control of the company concerned.”.

3.14 Examples of transactions to which the shared jurisdiction rules do not apply (because they fall outside the narrow definition of “**offers**” in the second paragraph of section 3(b) of the Introduction to the Code) include the following:

- (a) a transaction which is effected by means of a “**scheme of arrangement**” of a shared jurisdiction company under the Act. This is because a scheme of arrangement is an arrangement made between a company and its shareholders and is not “*a public offer ... made to the holders of the company’s securities to acquire those securities*”; and
- (b) a transaction in circumstances where the offeror already has “**control**” of a shared jurisdiction company (applying the test of control in the EEA Member

State in which the company has its registered office). This is because such a transaction would not be an “*offer which follows or has as its objective the acquisition of control of the company concerned*”.

3.15 As the shared jurisdiction rules apply only to companies which have securities admitted to trading on a regulated market in an EEA Member State, they do not apply to, for example, a UK-registered company which has securities admitted to trading only on an MTF in the UK or on a stock exchange in the Channel Islands or the Isle of Man.

3.16 In addition, as Jersey, Guernsey and the Isle of Man are not EEA Member States, the shared jurisdiction rules do not apply to an offer for a company where:

- (a) the company has its registered office in Jersey, Guernsey or the Isle of Man (even if its securities are admitted to trading on a regulated market in an EEA Member State); or
- (b) the company has its registered office in an EEA Member State other than the UK and its securities are admitted to trading on a market in Jersey, Guernsey or the Isle of Man (and not on a regulated market in an EEA Member State).

**(e) *The shared jurisdiction rules in practice***

*(i) Shared jurisdiction offers since 2006*

3.17 Since the implementation of the Takeovers Directive on 20 May 2006, the Panel has regulated eight offers under the shared jurisdiction rules. Of these offers:

- (a) seven were offers for a company which had its registered office in an EEA Member State other than the UK and whose securities were admitted to trading on a regulated market in the UK; and
- (b) one was an offer for a company which had its registered office in the UK and whose securities were admitted to trading on a regulated market in an EEA Member State (and not on a regulated market in the UK).

*(ii) Shared jurisdiction companies to which the Code currently applies*

3.18 The Code Committee understands that there are 25 companies which:

- (a) have their registered office in an EEA Member State other than the UK;

- (b) have their securities admitted to trading on a regulated market in the UK (and not on a regulated market in the EEA Member State of their registered office); and
- (c) where appropriate, have not chosen to be subject to the jurisdiction of a supervisory authority of an EEA Member State other than the UK under Article 4.2(c) of the Takeovers Directive.

These companies are listed in **Part 1 of Appendix C**.

- 3.19 The Code Committee understands that there are 11 companies which have their registered office in the UK and which have their securities admitted to trading on a regulated market in an EEA Member State but not on a regulated market in the UK. These companies are listed in **Part 2 of Appendix C**.

**(f) *Impact of the UK's withdrawal from the EU on the shared jurisdiction rules***

- 3.20 As explained in Section 2 of this PCP, regulation 3 of the Takeovers (EU Exit) Regulations will replace section 943(1) of the Act with a new section 943(1), which will require the Panel to make rules in accordance with Part 2 of the new Schedule 1C to the Act. The relevant requirements of the Articles of the Takeovers Directive referred to in the current section 943(1), other than Article 4.2, will, in effect, be set out in the new Schedule 1C to the Act.
- 3.21 Upon the new section 943(1) of the Act coming into force, the Panel will no longer have a statutory obligation to retain the shared jurisdiction rules in section 3(a)(iii) of the Introduction to the Code.
- 3.22 The Code Committee has been advised, however, that the removal of the requirement in section 943(1) of the Act for the Panel to make rules giving effect to Article 4.2 of the Takeovers Directive would not, of itself, require the Panel to delete the existing provisions of section 3(a)(iii) of the Introduction to the Code (or otherwise undermine the shared jurisdiction rules). The Code Committee has, therefore, considered whether the Panel should continue to regulate offers for companies which currently fall within section 3(a)(iii) of the Introduction to the Code once the Takeovers Directive ceases to apply in the UK. The options which the Code Committee has considered as alternatives to the Panel ceasing to regulate offers for shared jurisdiction companies are summarised in sections 4(g) to (j) below.

**(g) *New bilateral/multilateral shared jurisdiction regimes with EEA supervisory authorities***

- 3.23 One option would be for the Panel to enter into bilateral or multilateral arrangements with the supervisory authorities in one or more of the remaining EEA Member States, which arrangements would replicate the provisions of the Takeovers Directive's shared jurisdiction regime (which would no longer apply in the UK).
- 3.24 Having explored this possibility with the relevant EEA Member State supervisory authorities, the Code Committee considers that this is not a feasible option.

**(h) *Unilateral, partial regulation of former shared jurisdiction companies***

- 3.25 Another option would be for the Panel, in effect, to continue to apply section 3(a)(iii) of the Introduction to the Code in its current form after the Takeovers Directive has ceased to apply in the UK, i.e. unilaterally to regulate the relevant aspects of offers (as narrowly defined) for shared jurisdiction companies on the basis described in section 3(a)(iii) of the Introduction, regardless of whether the supervisory authority in the other EEA Member State concerned would also regulate any aspect of the offer. For example:
- (a) in the case of a company with its registered office in the UK and its securities admitted to trading only on a regulated market in an EEA Member State, the Panel could apply the rules of the Code which relate to "*employee information and company law matters*" (but not those which relate to "*consideration and procedural matters*"); and
  - (b) in the case of a company with its registered office in an EEA Member State and its securities admitted to trading only on a regulated market in the UK, the Panel could apply the rules of the Code which relate to "*consideration and procedural matters*" (but not those which relate to "*employee information and company law matters*").
- 3.26 The Code Committee considers that a regime under which certain aspects of an offer were regulated by the Panel under the Code but the other aspects of the offer were not regulated would be manifestly unsatisfactory. It has therefore rejected the option of retaining section 3(a)(iii) of the Introduction to the Code in its current form, whereby the Panel would regulate offers for former shared jurisdiction companies on a unilateral, partial basis.

**(i) Extension of jurisdiction over UK-registered companies**

- 3.27 A further option would be to apply the Code in full to an offer for any company which has its registered office in the UK, including former shared jurisdiction companies, regardless of whether the company satisfies the residency test.
- 3.28 If section 3(a)(iii) of the Introduction to the Code is deleted, then, pursuant to the current section 3(a)(ii) of the Introduction to the Code, the Code will apply (in full) to an offer for company which is a UK-registered shared jurisdiction company, provided that the company satisfies the residency test.
- 3.29 As regards the application of the Code to a UK-registered company which falls outside section 3(a)(i) of the Introduction to the Code and which does not satisfy the residency test, the Code Committee consulted on the question of whether the Code should apply to such a company in PCP 2012/3 (*Companies subject to the Takeover Code*)<sup>14</sup>. In the light of concerns expressed by respondents to PCP 2012/3, it was concluded in RS 2012/3<sup>15</sup> that the Code should not apply to such a company and that the residency test should be retained.
- 3.30 The Code Committee continues to believe that the residency test should apply to such companies and that the Code should not, therefore, apply to a UK-registered company which does not satisfy the requirements of section 3(a)(i) of the Introduction to the Code and which does not satisfy the residency test.

**(j) Extension of jurisdiction to overseas-registered companies**

- 3.31 Another option would be to apply the Code to offers for any overseas company with securities admitted to trading on, for example, a regulated market in the UK, including former shared jurisdiction companies.
- 3.32 Historically, the Panel has sought to apply the Code only to companies which are registered in jurisdictions in which it is acknowledged to be the regulator of takeover bids, i.e. the UK, Jersey, Guernsey and the Isle of Man. The reasons for this include that:
- (a) the Code is based on UK company law architecture;
  - (b) it is undesirable to extend the application of the Code to jurisdictions in which the Panel might be unable to enforce the rules of the Code, and rulings made by the

<sup>14</sup> <http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/PCP201203.pdf>

<sup>15</sup> <http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/RS201203.pdf>

Panel pursuant to those rules, particularly where local authorities might have no duty of co-operation with the Panel and where there would be no equivalent to the power in section 955 of the Act for the Panel to seek compliance orders from the courts; and

- (c) asserting jurisdiction over offers for overseas companies might result in “compatibility of laws” issues in relation to, for example, local securities laws or regulations regarding the disclosure of the ownership of securities.

3.33 For these reasons, the Code Committee does not believe that the jurisdiction of the Code should extend to offers for any overseas companies once the Takeover Directive’s shared jurisdiction regime ceases to apply in the UK. The Code Committee considers that the application of the Code to such companies would represent a disproportionate risk for the Panel. If such companies (including former shared jurisdiction companies) wish to enjoy the protections afforded by the Code, they can do so by means of re-registering in the UK, the Channel Islands or the Isle of Man.

**(k) Conclusion**

3.34 For the reasons explained above, the Code Committee does not favour any of the alternative options to the Panel ceasing to regulate offers for shared jurisdiction companies.

3.35 The Code Committee has therefore concluded that the Code’s shared jurisdiction rules should cease to apply upon the Takeovers Directive ceasing to apply in the UK and, accordingly, proposes that section 3(a)(iii) of the Introduction to the Code should be deleted at that time.

**(l) Consequences of the shared jurisdiction rules ceasing to apply**

*(i) EEA Member State-registered shared jurisdiction companies*

3.36 The Executive has discussed the consequences of the shared jurisdiction regime ceasing to apply in the UK with the supervisory authorities in the four EEA Member States in which the shared jurisdiction companies which have securities admitted to trading on a regulated market in the UK have their registered office.

3.37 The supervisory authorities in Cyprus, Luxembourg and The Netherlands confirmed to the Executive that, upon the Takeovers Directive ceasing to apply in UK, they would not

- have jurisdiction over an offer for a company which has its registered office in their country and which has securities admitted to trading only on a UK regulated market.
- 3.38 The Irish Takeover Panel confirmed to the Executive that, upon the Takeovers Directive ceasing to apply in UK, it would have “full” jurisdiction over an offer for a company (other than a closed-ended fund) which has its registered office in the Republic of Ireland and which has securities admitted to trading on a UK regulated market (and not on a regulated market in another EEA Member State).
- (ii) *UK-registered shared jurisdiction companies*
- 3.39 If the shared jurisdiction rules in section 3(a)(iii) of the Introduction to the Code are deleted, the question of whether the Code will apply to an offer for a UK-registered shared jurisdiction company will, in effect, depend on whether the company satisfies the residency test.
- 3.40 If the company satisfies the residency test, then all of the provisions of the Code (and not only those relating to “*employee information and company law matters*”) will apply to an offer for the company. If the company does not satisfy the residency test, then the Code will not apply to an offer for the company.
- 3.41 There is a further question as to whether an offer for a UK-registered former shared jurisdiction company will also be subject to the rules of the supervisory authority in the EEA Member State where the regulated market on which the company’s securities are admitted to trading is located. If so, and if the company also satisfies the residency test, then the offer will be subject to the “**dual jurisdiction**” of the Panel and the relevant supervisory authority, i.e. the rules of both regulators will apply. Section 3(d) (*Dual jurisdiction*) of the Introduction to the Code provides that, in such cases, the Panel should be consulted so that guidance can be given on how any conflicts between the relevant rules may be resolved (see also section 4(d)(vii) below in relation to dual jurisdiction situations).
- (m) ***Shared jurisdiction offers which straddle the implementation date***
- (i) *Introduction*
- 3.42 The Code Committee has considered the application of the Code to an offer for a shared jurisdiction company which is on-going on the date on which section 3(a)(iii) of the Introduction to the Code is deleted.

(ii) *Offers for companies to which the Code will no longer apply*

3.43 As regards an offer for a shared jurisdiction company to which the Code initially applies but to which the Code will no longer apply when the Takeovers Directive ceases to apply in the UK, i.e. an offer for either:

(a) a company which has its registered office in an EEA Member State (i.e. not in the UK) and whose securities are admitted to trading on a regulated market in the UK (but not in that EEA Member State); or

(b) a company which has its registered office in the UK and whose securities are admitted to trading on a regulated market in an EEA Member State (and not on a regulated market in the UK) and which does not satisfy the residency test,

the Code Committee considers that the Panel's regulation of the offer should cease upon section 3(a)(iii) of the Introduction being deleted from the Code. This is on the basis that an offer for the company would cease to be subject to the Code from that time.

3.44 The Code Committee would expect the documentation in relation to an offer for such a shared jurisdiction company which could straddle the date on which the Takeovers Directive was due to cease to apply in the UK to make clear that the Panel's regulation of the offer would cease on that date.

(iii) *Offers for companies to which the Code will apply (in full)*

3.45 As regards an offer for a shared jurisdiction company to which the Code will apply (in full) when the Takeovers Directive ceases to apply in the UK, i.e. an offer for a company which has its registered office in the UK, whose securities are admitted to trading on a regulated market in an EEA Member State (and not on a regulated market in the UK) and which satisfies the residency test, the Code Committee considers that the full requirements of the Code (i.e. not only the rules relating to "*employee information and company law matters*") should be applied to the company and to the transaction with effect from that time (except where to do so would give those requirements retroactive effect). The Code Committee would expect this to be made clear in the offer documentation.

3.46 In addition, the requirements of the Code which relate to matters such as the disclosure of interests and dealings in securities under Rule 8 would be applied in relation to the ongoing offer from the date on which the Takeovers Directive ceases to apply in the UK and on which the Code then applies (in full) to the offer for the company.

3.47 This approach would mirror that taken upon the implementation of the Takeovers Directive on 20 May 2006, when the revised Code was applied from that date to all companies and transactions to which it then related, including those transactions which had commenced but not completed prior to that date.

(iv) *Consultation*

3.48 Where parties have any doubt as to the consequences of the amendments to the Code proposed in this PCP, in particular the impact on any transaction which is in existence or contemplation, they should consult the Executive prior to the date on which the amendments are due to come into effect to obtain a ruling or guidance.

**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?**

#### 4. The Introduction to the Code

##### (a) *Background and introduction*

4.1 Section 4 of this PCP describes the amendments proposed to be made to the Introduction to the Code (in addition to the proposed deletion of the shared jurisdiction rules in section 3(a)(iii) of the Introduction, as to which see Section 3 above). It also proposes related amendments to the definitions of “**regulated market**”, “**multilateral trading facility**” and “**shares or securities**” in the Definitions Section of the Code.

4.2 The Introduction was introduced into the Code in its current form on 20 May 2006, i.e. the date on which the Takeovers Directive was implemented in the UK. The provisions of the new Introduction, which were consulted on in PCP 2005/5, incorporated various changes required to be made as a result of the Takeovers Directive and the legislation implementing the Directive, as well as some other refinements to the Panel’s then existing procedures.

4.3 Amendments to certain sections of the Introduction to the Code, as listed in section 4(b) (*The Code Committee*) of the Introduction, are made by the Panel and are not the responsibility of the Code Committee.<sup>16</sup> For ease of reference, however, all of the amendments which are proposed to be made to the Introduction have been included in this Section 4 of the PCP and in **Appendix D**.

4.4 Section 4 of this PCP also explains that the Executive will withdraw Practice Statement No 18 (*Cross-Border Mergers*) once it will no longer be possible to effect a statutory merger between a UK company and an EEA Member State company under The Companies (Cross-Border Mergers) Regulations 2007.

##### (b) *Section 1 - Overview*

4.5 Section 1 of the Introduction to the Code provides a general description of the Panel and its functions.

4.6 The second sentence of the first paragraph of section 1 of the Introduction to the Code, which refers to the Panel’s designation as a supervisory authority for the purposes of the Takeovers Directive, will be required to be deleted upon the Directive ceasing to apply in the UK.

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<sup>16</sup> The sections of the Introduction to the Code for which the Panel, and not the Code Committee, is responsible are sections 1, 2(a) and (b), 4(a), (b) and (c), 5, 7, 8, 13, 14, 15 and 16.

- 4.7 In addition, in the third sentence of the first paragraph of section 1 of the Introduction to the Code, it is proposed to delete the reference to The Companies Act 2006 (Amendment of Schedule No 2) Order 2009 having amended Chapter 1 of Part 28 of the Act. This reference is unnecessary, given that references to the Act in the Code are to the Act as amended from time to time.
- 4.8 It is also proposed to make a minor change to the fourth sentence of the first paragraph of section 1 of the Introduction to the Code to reflect the fact that the Rules of Procedure of the Hearings Committee are now included in Appendix 9 of the Code.
- 4.9 The amendments proposed to be made to section 1 of the Introduction to the Code are, therefore, as follows:

#### **"1 OVERVIEW**

The Panel on Takeovers and Mergers (the "Panel") is an independent body, established in 1968, whose main functions are to issue and administer the City Code on Takeovers and Mergers (the "Code") and to supervise and regulate takeovers and other matters to which the Code applies in accordance with the rules set out in the Code. ~~It has been designated as the supervisory authority to carry out certain regulatory functions in relation to takeovers pursuant to the Directive on Takeover Bids (2004/25/EC) (the "Directive").~~ Its statutory functions are set out in and under Chapter 1 of Part 28 of the Companies Act 2006 ~~(as amended by The Companies Act 2006 (Amendment of Schedule 2) (No 2) Order 2009)~~ (the "Act"). Rules are set out in ~~the Code (including this Introduction, the General Principles, the Definitions, and the Rules (and the related Notes) and the Appendices)~~ (including in and the Rules of Procedure of the Hearings Committee at Appendix 9). These rules may be changed from time to time, and rules may also be set out in other documents as specified by the Panel. Statutory rules also apply to the Isle of Man, Jersey and Guernsey: see sections 14, 15 and 16 for more details."

- 4.10 In accordance with section 4(b) of the Introduction to the Code, these amendments would be made by the Panel (and not by the Code Committee).

#### **(c) Section 2 – The Code**

##### *(i) Introduction and consequential amendments*

- 4.11 Section 2 of the Introduction to the Code provides a general description of the status of the Code and its objectives. It also sets out the circumstances in which the Panel may derogate or grant a waiver from the application of the Code.
- 4.12 In sections 2(a) (*Nature and purpose of the Code*), 2(b) (*General Principles and Rules*) and 2(c) (*Derogations and Waivers*) of the Introduction to the Code, references to the

Takeovers Directive will be required to be deleted and replaced, where appropriate, with references to the Act.

(ii) *Derogations and waivers: requirement to respect the General Principles*

4.13 Section 2(c) of the Introduction to the Code states that the Panel may derogate or grant a waiver to a person from the application of a rule:

“provided, in the case of a transaction and rule subject to the requirements of the Directive, that the General Principles are respected”. [emphasis added]

This proviso derives from Article 4.5 of the Takeovers Directive, which states that:

“Provided that the general principles laid down in Article 3(1) are respected, Member States may provide in the rules that they make or introduce pursuant to this Directive for derogations from those rules:

(i) by including such derogations in their national rules, in order to take account of circumstances determined at national level

and/or

(ii) by granting their supervisory authorities, where they are competent, powers to waive such national rules, to take account of the circumstances referred to in (i) or in other specific circumstances, in which case a reasoned decision must be required.”.

4.14 The Code Committee considers that, following the Takeovers Directive ceasing to apply in the UK, the General Principles should be respected in all cases where the Panel derogates or grants a waiver from the application of a rule, in other words that the requirement to respect the General Principles should not be limited to applying only in the case of certain transactions or rules. In any event, current practice is to respect the General Principles in all circumstances in which the rules of the Code are derogated from or waived. The Code Committee therefore proposes to delete the current limitation on the requirement to respect the General Principles.

(iii) *Transitional provisions*

4.15 Section 2(d) (*Transitional provisions for offers which are not takeover bids under the Directive*) of the Introduction to the Code was introduced as a “continuity of law” provision on 6 April 2007, i.e. the date on which the relevant provisions of the Act came into force.

4.16 Although no substantive change would be required to be made to section 2(d) of the Introduction to the Code as a result of the amendments made to the Act by the Takeovers

(EU Exit) Regulations, the Code Committee does not consider such a “continuity of law” provision to be necessary as a rule in the Code and therefore proposes to delete it.

(iv) *Proposed amendments*

4.17 The amendments proposed to be made to section 2 of the Introduction to the Code are, therefore, as follows:

**“2 THE CODE**

Save for sections 2(c) and (d) (which each sets out a rule), this section gives an overview of the nature and purpose of the Code.

**(a) Nature and purpose of the Code**

...

The Code has been developed since 1968 to reflect the collective opinion of those professionally involved in the field of takeovers as to appropriate business standards and as to how fairness to offeree company shareholders and an orderly framework for takeovers can be achieved. ~~Following the implementation of the Directive by means of the Act, the~~ rules set out in the Code have a statutory basis in relation to the United Kingdom and comply with the relevant requirements of the ~~Act~~ Directive. The rules set out in the Code also have a statutory basis in relation to the Isle of Man, Jersey and Guernsey: see sections 14, 15 and 16 respectively.

**(b) General Principles and Rules**

The Code is based upon a number of General Principles, which are essentially statements of standards of commercial behaviour. These General Principles are the same as the general principles set out in Part 1 of Schedule 1C to the Act ~~Article 3 of the Directive~~. They apply to takeovers and other matters to which the Code applies. They are expressed in broad general terms and the Code does not define the precise extent of, or the limitations on, their application. They are applied in accordance with their spirit in order to achieve their underlying purpose.

...

**(c) Derogations and Waivers**

The Panel may derogate or grant a waiver to a person from the application of a rule (provided, ~~in the case of a transaction and rule subject to the requirements of the Directive,~~ that the General Principles are respected) either:

- (i) in the circumstances set out in the rule; or
- (ii) in other circumstances where the Panel considers that the particular rule would operate unduly harshly or in an unnecessarily restrictive or burdensome or otherwise inappropriate manner (in which case a reasoned decision will be given).

~~(d) Transitional provisions for offers which are not takeover bids under the Directive~~

~~In relation to any offer which is not a “takeover bid” within the meaning given in the Directive, anything done (or not done) with respect to a rule set out in the Code as in force before 6 April 2007 shall have effect from 6 April 2007 as done (or not done) with respect to that rule of the Code as in force from 6 April 2007 and any reference in the Code to a rule of the Code shall be construed as including a reference to that rule as in force before 6 April 2007.~~

~~These transitional provisions do not apply to the Channel Islands or the Isle of Man.”.~~

- 4.18 The amendments to sections 2(a) and (b) of the Introduction to the Code would be made by the Panel and the remaining amendments would be made by the Code Committee.

**(d) Section 3 – Companies, transactions and persons subject to the Code**

*(i) Introduction*

- 4.19 Section 3 of the Introduction to the Code sets out the scope of the Panel’s jurisdiction and certain associated matters.

*(ii) Companies*

- 4.20 Section 3(a)(i) of the Introduction to the Code provides that the Code applies to:

“all offers (not falling within paragraph (iii) below) for companies and Societas Europaea (and, where appropriate, statutory and chartered companies) which have their registered offices in the United Kingdom, the Channel Islands or the Isle of Man if any of their securities are admitted to trading on a regulated market or a multilateral trading facility in the United Kingdom or on any stock exchange in the Channel Islands or the Isle of Man.”.

- 4.21 In addition, section 3(a)(ii) of the Introduction to the Code provides that the Code also applies to:

“all offers (not falling within paragraph (i) above or paragraph (iii) below) for public and private companies and Societas Europaea (and, where appropriate, statutory and chartered companies) which have their registered offices in the United Kingdom, the Channel Islands or the Isle of Man and which are considered by the Panel to have their place of central management and control in the United Kingdom, the Channel Islands or the Isle of Man ...”.

- 4.22 As regards private companies, the Code will apply only if one of the criteria in paragraphs (A) to (D) of section 3(a)(ii) of the Introduction is met. The relevant criterion for the

purposes of this PCP is that in paragraph (A), which provides that the Code applies to offers for private companies only when:

“any of their securities have been admitted to trading on a regulated market or a multilateral trading facility in the United Kingdom or on any stock exchange in the Channel Islands or the Isle of Man at any time during the 10 years prior to the relevant date”.

4.23 The proposed amendments to sections 3(a)(i) and (ii) of the Introduction to the Code are set out in section 4(d)(ix) below.

(iii) *Definitions of “regulated market” and “multilateral trading facility”*

4.24 The terms “**regulated market**” and “**multilateral trading facility**”, as used in section 3(a) of the Introduction to the Code, are currently EU law terms, which are defined in Directive 2014/65/EU on markets in financial instruments<sup>17</sup> (“**MiFID II**”). The Definitions Section of the Code defines these terms by reference to MiFID II, as follows:

**“Regulated market**

Regulated market has the same meaning as in Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments (see Article 4.1(21)).”; and

**“Multilateral trading facility**

Multilateral trading facility has the same meaning as in Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments (see Article 4.1(22)).”.

4.25 Upon the Takeovers (EU Exit) Regulations coming into force, paragraph 21(1) of the new Schedule 1C to the Act will provide that:

“In this Schedule ... “company” means a company that has securities admitted to trading on a UK regulated market.” [emphasis added]

In accordance with the amended section 943(1) of the Act, the Code will need to apply to an offer for such a company (in addition to any other companies or transactions to which the Code applies).

4.26 Upon the coming into force of The Markets in Financial Instruments (Amendment) (EU

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<sup>17</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0065>

Exit) Regulations 2018<sup>18</sup>, a draft of which was published on 5 October 2018, the terms “**UK regulated market**” and “**UK multilateral trading facility**” will be newly defined in Article 2.1 of Regulation (EU) No 600/2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, as it will be amended by those Regulations (“**onshored MiFIR**”).

4.27 Paragraph (13A) of Article 2.1 of onshored MiFIR will define a “UK regulated market” as “*a regulated market which is a recognised investment exchange under section 285 of [the Financial Services and Markets Act 2000], but not an overseas investment exchange within the meaning of section 313(1) of that Act*”.

4.28 Paragraph (14A) of Article 2.1 of onshored MiFIR will define a “UK multilateral trading facility” or a “UK MTF” as:

“a multilateral system, operated by a UK investment firm or market operator, which-

- (a) brings together multiple third-party buying and selling interests in financial instruments (in the system and in accordance with non-discretionary rules) in a way which results in a contract; and
- (b) complies, as applicable, with-
  - (i) Paragraph 9A of the Schedule to the Recognition Requirements Regulations;
  - (ii) the EU regulations specified in Schedule 2 to [onshored MiFIR];
  - (iii) rules made by the competent authority governing the operating conditions of investment firms so far as they apply to MTFs,

and for the purposes of this definition, an investment firm or market operator is a UK investment firm or market operator if it has its head office in the United Kingdom”.

4.29 In addition, The Accounts and Reports (Amendment) (EU Exit) Regulations 2018<sup>19</sup>, which were published on 31 October 2018, will introduce a new definition of “UK regulated market” into section 1173(1) of the Act, as follows:

““UK regulated market” has the meaning given in Article 2.1.13A of Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 and amending Regulation (EU) No. 648/2012;”.

<sup>18</sup> <https://www.gov.uk/government/publications/draft-markets-in-financial-instruments-amendment-eu-exit-regulations-2018>

<sup>19</sup> <http://www.legislation.gov.uk/ukdsi/2018/9780111174036>

- 4.30 In the light of the above, the Code Committee proposes to:
- (a) amend the references in section 3(a) of the Introduction to the Code to a “*regulated market in the United Kingdom*” and a “*multilateral trading facility in the United Kingdom*” so as to refer to a “*UK regulated market*” and a “*UK multilateral trading facility*”; and
  - (b) delete the definitions of “**regulated market**” and “**multilateral trading facility**” from the Definitions Section of the Code (as these terms would no longer be used in the Code) and introduce new definitions of “**UK regulated market**” and “**UK multilateral trading facility**”.

The proposed amendments are set out in section 4(d)(ix) below.

(iv) *Societas Europaea*

- 4.31 Since 8 October 2004, it has been possible to set up a *Societas Europaea*, or European Public Limited-Liability Company, in the UK pursuant to the European Company Statute.<sup>20</sup>
- 4.32 Under sections 3(a)(i) and (ii) of the Introduction to the Code, the Code applies to an offer for a *Societas Europaea* which has its registered office in the UK if:
- (a) any of its securities are admitted to trading on a regulated market or an MTF in the UK or on any stock exchange in the Channel Islands or the Isle of Man; or
  - (b) it is considered by the Panel to have its place of central management and control in the UK, the Channel Islands or the Isle of Man.
- 4.33 The Technical Notice “*Structuring your business if there’s no Brexit deal*”<sup>21</sup> published by the Department for Business, Energy and Industrial Strategy (“**BEIS**”) on 12 October 2018 stated that “*For Societas Europaea ... that are registered in the UK and have not made alternative arrangements before exit, the government will put in place a way of automatically converting them into a new UK corporate structure so that they will have a clear legal status post exit.*”.

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<sup>20</sup> The European Company Statute comprises [Council Regulation \(EC\) No 2001/2157 on the Statute for a European Company](#) and [Council Directive 2001/86/EC supplementing the Statute for a European Company with regard to the involvement of employees](#).

<sup>21</sup> <https://www.gov.uk/government/publications/structuring-your-business-if-theres-no-brexit-deal--2/structuring-your-business-if-theres-no-brexit-deal>

4.34 On 1 November 2018, The European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2018<sup>22</sup> were published. Upon those Regulations coming into force, any UK-registered *Societas Europaea* will be converted automatically into a “UK *Societas*”, which will be a new UK corporate form.

4.35 The references to a *Societas Europaea* in sections 3(a)(i) and (ii) of the Introduction to the Code will therefore be required to be replaced with references to a UK *Societas*, as set out in section 4(d)(ix) below.

(v) *Open-ended investment companies*

4.36 Section 3(a)(iv) of the Introduction to the Code provides that:

“The Code does not apply to offers for open-ended investment companies as defined in Article 1(2) of the Directive.”.

4.37 The Code Committee has considered whether a new definition of an “**open-ended investment company**” should be introduced into the Code upon the Takeovers Directive ceasing to apply in the UK. It has concluded that this is not necessary on the basis that the meaning of this term is generally understood.

4.38 The reference to Article 1.2 of the Takeovers Directive will therefore be deleted from section 3(a)(iv) of the Introduction to the Code (which, following the deletion of the shared jurisdiction rules as proposed in Section 3 above, will become section 3(a)(iii) of the Introduction), as set out in section 4(d)(ix) below.

(vi) *Transactions*

4.39 Certain minor amendments will be required to be made to section 3(b) (*Transactions*) of the Introduction to the Code to reflect the deletion of section 3(a)(iii) of the Introduction in relation to shared jurisdiction companies, as set out in section 4(d)(ix) below.

(vii) *Dual jurisdiction*

4.40 Section 3(d) (*Dual jurisdiction*) of the Introduction to the Code notes that, in certain circumstances, a matter to which the Code applies may be subject to the “dual jurisdiction” of both the Panel and an overseas takeover regulator. For example, the securities of a company to which the Code applies may be admitted to trading on a market in an overseas jurisdiction in which the local takeover regulations apply to offers

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<sup>22</sup> <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-european-public-limited-liability-company-amendment-etc-eu-exit-regulations-2018>

for all companies which have securities admitted to trading in that jurisdiction, regardless of matters such as the location of the company's registered office.

4.41 Certain minor amendments will be required to be made to section 3(d) of the Introduction to the Code to reflect the deletion of section 3(a)(iii) of the Introduction, as set out in section 4(d)(ix) below.

4.42 Upon the Takeovers Directive ceasing to apply in the UK, a greater number of offers may be subject to the dual jurisdiction of the Panel and an overseas regulator. For example, under Article 4.2 of the Takeovers Directive, an offer for a UK-registered company with securities admitted to trading on a regulated market in the UK and also on a regulated market in another EEA Member State would currently be subject to the sole jurisdiction of the Panel. However, if the supervisory authority in the EEA Member State was required to regulate offers for all companies with securities admitted to trading on a regulated market in its country (other than as required by the Takeovers Directive), then, following the Directive ceasing to apply in the UK, that authority may assert jurisdiction over an offer for UK-registered company with securities admitted to trading on a regulated market in that EEA Member State, even if the offer would also fall within the jurisdiction of the Panel.

(viii) *Definition of "shares or securities"*

4.43 In addition to the amendments referred to above, the definition of "**shares or securities**" in the Definitions Section of the Code will also be required to be amended to reflect the deletion of section 3(a)(iii) of the Introduction to the Code, as set out in section 4(d)(ix) below.

(ix) *Proposed amendments*

4.44 In the light of the above, in addition to the deletion of section 3(a)(iii) of the Introduction to the Code proposed in Section 3 of this PCP, the Code Committee proposes to make the following amendments to section 3 of the Introduction:

**"3 COMPANIES, TRANSACTIONS AND PERSONS SUBJECT TO THE CODE**

...

**(a) Companies**

(i) UK, Channel Islands and Isle of Man registered and traded companies

The Code applies to all offers ~~(not falling within paragraph (iii) below)~~ for companies ~~and Societas Europaea (and including, where appropriate, statutory and chartered companies and UK Societas)~~ which have their registered offices\* in the United Kingdom, the Channel Islands or the Isle of Man if any of their securities are admitted to trading on a UK regulated market or a UK multilateral trading facility# ~~in the United Kingdom~~ or on any stock exchange in the Channel Islands or the Isle of Man.

(ii) Other companies

The Code also applies to all offers (not falling within paragraph (i) above ~~or paragraph (iii) below~~) for public and private companies† ~~and Societas Europaea~~ (and, where appropriate, statutory and chartered companies and UK Societas) which have their registered offices\* in the United Kingdom, the Channel Islands or the Isle of Man and which are considered by the Panel to have their place of central management and control in the United Kingdom, the Channel Islands or the Isle of Man, but in relation to private companies only when:

- (A) any of their securities have been admitted to trading on a UK regulated market or a UK multilateral trading facility# ~~in the United Kingdom~~ or on any stock exchange in the Channel Islands or the Isle of Man at any time during the 10 years prior to the relevant date; or

...

*#In the case of a company whose securities are or have been admitted to trading on a UK multilateral trading facility ~~in the United Kingdom~~, paragraph (i) will apply, and criterion (A) of paragraph (ii) will be satisfied, only if the company has approved trading, or requested admission to trading, of its securities on the relevant UK multilateral trading facility.*

...

(iviii) Open-ended investment companies

The Code does not apply to offers for open-ended investment companies ~~as defined in Article 1(2) of the Directive.~~

**(b) Transactions**

~~In cases falling within paragraphs (a)(i) or (ii) above,~~†The Code is concerned with regulating takeover bids and merger transactions of the relevant companies, however effected, including by means of statutory merger or scheme of arrangement (as defined in the Definitions Section). The Code is also concerned with regulating other transactions (including offers by a parent company for shares in its subsidiary, dual holding company transactions, new share issues, share capital reorganisations and offers to minority shareholders) which have as their objective or potential effect (directly or indirectly) obtaining or consolidating control of the relevant companies, as well as partial offers (including tender offers pursuant to Appendix 5) to shareholders for securities in the relevant companies. The Code also applies to unitisation proposals which are in competition with another transaction to which the Code applies.

~~In cases falling within paragraph (a)(iii) above, “offers” means only any public offer (other than by the company itself) made to the holders of the company’s~~

~~securities to acquire those securities (whether mandatory or voluntary) which follows or has as its objective the acquisition of control of the company concerned.~~

...

**(d) Dual jurisdiction**

Takeovers and other matters to which the Code applies may from time to time be subject to the dual jurisdiction of the Panel and an overseas takeover regulator, ~~including offers for those companies within paragraph (a)(iii) above.~~ In such cases, early consultation with the Panel is advised so that guidance can be given on how any conflicts between the relevant rules may be resolved ~~and, where relevant, which provisions of the Code apply pursuant to Article 4(2)(c) of the Directive.~~

- 4.45 The Code Committee proposes to delete the current definitions of **“regulated market”** and **“multilateral trading facility”** from the Definitions Section of the Code and to introduce new definitions of **“UK regulated market”** and **“UK multilateral trading facility”**, as follows:

**“UK regulated market**

UK regulated market has the meaning given in paragraph (13A) of Article 2(1) of Regulation (EU) No 600/2014 on markets in financial instruments (as amended by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018).”; and

**“UK multilateral trading facility**

UK multilateral trading facility has the meaning given in paragraph (14A) of Article 2(1) of Regulation (EU) No 600/2014 on markets in financial instruments (as amended by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations) 2018).”.

- 4.46 Consequential amendments will be required to be made to the following provisions of the Code which currently refer to a *“regulated market in the United Kingdom”* and/or a *“multilateral trading facility in the United Kingdom”*, as set out in **Appendix D**:
- (a) Note 7 on Rule 6 (*Unlisted securities*);
  - (b) Section 2 of Appendix 4 (*Qualifications for acting as a receiving agent*); and
  - (c) Sections 1, 2(a) and 2(f) of Appendix 5 (*Tender offers*).
- 4.47 In addition, the following amendments will be made to the definition of **“shares or securities”** in the Definitions Section of the Code:

### “Shares or securities

(1) Except as set out below or as the context otherwise requires, references to shares, including when used in other expressions such as shareholders (but excluding equity share capital), include securities, and vice versa.

~~(2) In paragraph 3(a)(iii) and in the second paragraph of section 3(b) of the Introduction, the securities referred to are only transferable securities carrying voting rights.~~

~~(3) In paragraphs 3(a)(i) and (ii) and in the first paragraph of section 3(b) of the Introduction, the shares/securities referred to are only those shares/securities comprised in the company’s equity share capital (whether voting or non-voting) and other transferable securities carrying voting rights.”.~~

#### (x) *Cross-Border Mergers*

4.48 The Code currently applies to “**Cross-Border Mergers**” between a UK company and an EEA Member State company undertaken under The Companies (Cross-Border Mergers) Regulations) 2007 (SI 2007/2974)<sup>23</sup> (the “**Cross-Border Mergers Regulations**”), which implemented Directive 2005/56/EC on cross-border mergers of limited liability companies<sup>24</sup> (the “**Cross-Border Mergers Directive**”). Although Cross-Border Mergers are not expressly referred to in the Code, the application of the Code to Cross-Border Mergers is explained in Practice Statement No 18<sup>25</sup>, published by the Executive.

4.49 The Technical Notice “*Structuring your business if there’s no Brexit deal*” published by BEIS on 12 October 2018 explained that “*Cross-border mergers involving UK companies will no longer be able to take place under the [Cross-Border Mergers Directive]*”.

4.50 On 31 October 2018, The Companies, Limited Liability Partnerships and Partnerships (Amendment etc.) (EU Exit) Regulations 2018<sup>26</sup> were published. Upon those Regulations coming into force, the Cross-Border Mergers Regulations will be revoked and the Executive will withdraw Practice Statement No 18 in relation to Cross-Border Mergers.

#### (e) **Section 12 – Co-operation and information sharing**

##### (i) *Introduction*

4.51 Section 12 of the Introduction to the Code summarises the relevant provisions of sections 950 and 948 of the Act. It also sets out the basis on which the Panel will effect service of

<sup>23</sup> <http://www.legislation.gov.uk/ukSI/2007/2974/contents/made>

<sup>24</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32005L0056>

<sup>25</sup> <http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/PS18.pdf>

<sup>26</sup> <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-companies-limited-liability-partnerships-and-partnerships-amendment-etc-eu-exit-regulations-2018>

documents under Article 4.4 of the Takeovers Directive.

(ii) *Article 4.4 of the Takeovers Directive*

4.52 Article 4.4 of the Takeovers Directive provides as follows:

“The supervisory authorities of the Member States for the purposes of this Directive and other authorities supervising capital markets ... shall cooperate and supply each other with information wherever necessary for the application of the rules drawn up in accordance with this Directive ... . Information thus exchanged shall be covered by the obligation of professional secrecy to which persons employed or formerly employed by the supervisory authorities receiving the information are subject. Cooperation shall include the ability to serve the legal documents necessary to enforce measures taken by the competent authorities in connection with bids, as well as such other assistance as may reasonably be requested by the supervisory authorities concerned for the purpose of investigating any actual or alleged breaches of the rules made or introduced pursuant to this Directive.”.

(iii) *Section 950 of the Act*

4.53 Section 950 of the Act sets out the Panel’s duty of co-operation with other authorities and regulators and, amongst other things, implements Article 4.4 of the Takeovers Directive. Section 950 provides as follows:

**“950 Panel's duty of co-operation**

(1) The Panel must take such steps as it considers appropriate to co-operate with-

- (a) the Financial Conduct Authority;
- (aa) the Prudential Regulation Authority;
- (ab) the Bank of England;
- (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;
- (c) any other person or body that exercises functions of a public nature, under legislation in any country or territory outside the United Kingdom, that appear to the Panel to be similar to its own functions or those of the Financial Conduct Authority or the Prudential Regulation Authority or similar to the regulatory functions of the Bank of England.

(2) Co-operation may include the sharing of information that the Panel is not prevented from disclosing.”.

(iv) *Sections 948 and 949 of the Act*

4.54 Sections 948 and 949 of the Act provide that information obtained by the Panel in the course of exercising its functions is subject to restrictions on onward disclosure. However, these restrictions do not apply to, in summary, any disclosure made:

- (a) for the purpose of facilitating the carrying out by the Panel of any of its functions;
- (b) to a person or for a purpose set out in Schedule 2 to the Act; or
- (c) to certain UK and EEA Member State regulatory authorities, as specified in section 948(7) of the Act.

4.55 The relevant provisions are summarised in paragraphs 1195 to 1197 of the Explanatory Notes to the Act, as follows:

**1195.** Information concerning the private affairs of an individual or a business provided to the Panel in connection with its functions may not be disclosed during the individual's lifetime or while the business is carried on without the consent of the individual or business in question except for the purposes of carrying out the Panel's functions or unless it is disclosed to a person or for a purpose set out in Schedule 2.

**1196.** Schedule 2 sets out the "gateways" for disclosure of information obtained by the Panel in the exercise of its functions which are permitted under section 948, including the circumstances in which a disclosure to an overseas regulatory authority is permitted. Under section 948(4) and (5), the Secretary of State has the power to amend the Schedule, but only to specify persons exercising functions of a public nature or descriptions of disclosure where the purpose for which the disclosure is permitted is likely to assist in the exercise of a function of a public nature.

**1197.** Section 948(6)(a) provides that certain authorities mentioned in subsection (7) are not bound by the restrictions on disclosure imposed by subsection (2). These bodies are those other takeover supervisory authorities and financial services regulators with which the Panel has a duty to co-operate. Subsection (6)(b) provides that persons or bodies obtaining information from those authorities (whether directly or indirectly) are also not bound by the restrictions on disclosure imposed by subsection (2). These provisions are necessary to implement fully Article 4.4 of the Directive. Those bodies mentioned in subsection (7), and persons and bodies receiving information from them, will themselves be subject to restrictions on disclosure that will mirror those imposed by section 948, and so information originating from the Panel will still be protected from improper further disclosure."

4.56 Section (E) (*General*) of Part 2 of Schedule 2 to the Act includes "gateways" in relation to:

- (a) a disclosure for the purpose of enabling or assisting an overseas regulatory authority to exercise its regulatory functions (paragraph 2 of Section (E) of Part 2 of Schedule 2); and
  - (b) a disclosure in pursuance of any Community obligation (paragraph 5 of Section (E) of Part 2 of Schedule 2).
- (v) *Consequences of the UK exiting the EU*
- 4.57 Upon the Takeovers Directive ceasing to apply in the UK, there will no longer be a Directive-based requirement:
- (a) for the Panel to co-operate with the takeover supervisory authorities in EEA Member States; or
  - (b) for those supervisory authorities to co-operate with the Panel.
- 4.58 Regulation 5 of the Takeovers (EU Exit) Regulations will remove the specific requirement under section 950(1)(b) of the Act for the Panel to co-operate with EEA Member State supervisory authorities and the reference to those authorities will, therefore, be deleted from section 12 of the Introduction to the Code. In practice, however, the Panel will still be required to co-operate with the authorities referred to in section 950(1)(b) of the Act, owing to the Panel's broader duty of co-operation with overseas takeover and financial services regulatory authorities, as set out in section 950(1)(c). In addition, the Panel will still be able to disclose information to such overseas regulatory authorities, owing to the "gateway" provided in paragraph 2 of Section (E) of Part 2 of Schedule 2 to the Act.
- 4.59 However, regulation 4 of the Takeovers (EU Exit) Regulations will delete sections 948(7)(b) and (c) from the Act, such that there will no longer be an exception from the onward disclosure restrictions in relation to disclosures of information to takeover supervisory authorities and financial services regulators in EEA Member States. In other words, the Panel will continue to be able to disclose confidential information to EEA Member State authorities and regulators but those authorities and regulators will no longer be able to onward disclose such confidential information.
- 4.60 In addition, regulation 15 of the Takeovers (EU Exit) Regulations will delete paragraph 5 of Section (E) of Part 2 of Schedule 2 to the Act, such that there will no longer be a "gateway" in relation to a disclosure of information "*in pursuance of any Community obligation*".

- 4.61 The summary of section 948 of the Act in section 12 of the Introduction to the Code will not, however, require amendment as it does not go into the above level of detail.
- 4.62 The description in section 12 of the Introduction to the Code of the basis on which the Panel will effect service of documents under Article 4.4 of the Takeovers Directive on behalf of supervisory authorities in EEA Member States will be deleted. This is on the basis that Article 4.4 will no longer apply in the UK and no equivalent obligation will be placed on the Panel pursuant to the new Schedule 1C to the Act.
- 4.63 In addition, the reference in section 12 of the Introduction to the Code to the fact that Chapter 1 of Part 28 of the Act has been amended by The Companies Act 2006 (Amendment of Schedule No 2) Order 2009 will be deleted (see paragraph 4.7 above).

(vi) *Proposed amendments*

- 4.64 In the light of the above, section 12 of the Introduction to the Code will be amended as follows:

**“12 CO-OPERATION AND INFORMATION SHARING**

This section summarises the relevant provisions of the Act ~~and sets out the rules as to the basis on which the Panel will effect service of documents under Article 4(4) of the Directive~~ and the professional secrecy obligations applying in relation to information held by the Panel in connection with the exercise of its functions which does not fall within section 948 of the Act.

Under section 950 of the Act, the Panel must, to the extent it has power to do so, take such steps as it considers appropriate to co-operate with:

- (a) the FCA, the Prudential Regulation Authority and the Bank of England; and
- ~~(b) other supervisory authorities designated for the purposes of the Directive;~~  
~~and~~
- (eb) regulators outside the United Kingdom having functions similar to the Panel, the FCA or the Prudential Regulation Authority, or similar to the regulatory functions of the Bank of England,

including by the sharing of information which the Panel is permitted to disclose (see below). It may also exercise its powers to require documents and information (see section 9(b) above) for this purpose.

~~Where any supervisory authority designated for the purposes of the Directive by another member state or any authority responsible for the supervision of capital markets in another member state requests the Panel to serve any legal document in pursuance of its obligation of co-operation under Article 4(4) of the Directive, the Panel shall serve that document by first class post to the address specified for service in the request, and shall inform the requesting authority~~

~~accordingly. No other method of service will be adopted by the Panel, even where the request specifies another method of service. In cases where:~~

- ~~(a) no address for service is specified in the request; or~~
- ~~(b) the request specifies an address for service outside of the United Kingdom; or~~
- ~~(c) service of the document is validly refused by the party upon whom it is to be served; or~~
- ~~(d) the Panel has been unable to serve the document for any other reason,~~

~~the Panel shall return the document unserved to the requesting authority, along with a statement of the reasons for non-service.~~

Under section 948 of the Act, information received by the Panel in connection with the exercise of its statutory functions may not be disclosed without the consent of the individual (where it concerns a person's private affairs) or business to which it relates except as permitted by the Act. Schedule 2 of the Act ~~(as amended by The Companies Act 2006 (Amendment of Schedule 2) (No 2) Order 2009)~~ includes gateways to allow the Panel to pass information it receives to United Kingdom and overseas regulatory authorities and other persons in accordance with the conditions laid down in that Schedule. The circumstances in which this may occur include, but are not limited to, the circumstances falling within paragraph 11(b)(iv) above.”.

**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. The General Principles

- 5.1 Section 5 of this PCP sets out certain minor amendments proposed to be made to the General Principles of the Code.
- 5.2 The General Principles were introduced into the Code in their current form on 20 May 2006 pursuant to the requirement in section 943(1) of the Act that the Panel must make rules giving effect to Article 3.1 of the Takeovers Directive. As noted in section 2(b) (*General Principles and Rules*) of the Introduction to the Code, the General Principles of the Code are the same as the general principles in paragraphs (a) to (f) of Article 3.1 of the Takeovers Directive.
- 5.3 Upon the Takeovers (EU Exit) Regulations coming into force, the new section 943(1)(a) of the Act will provide that the Panel must make rules giving effect to the general principles in Part 1 of the new Schedule 1C to the Act. The substance of the general principles in Part 1 of Schedule 1C to the Act is the same as that of the current General Principles of the Code. However, there are some minor drafting and formatting differences between the two sets of general principles.
- 5.4 The Code Committee proposes to amend the General Principles of the Code so that they would be the same as the general principles in Part 1 of Schedule 1C to the Act, as follows:

### **"GENERAL PRINCIPLES**

1. **(1) All holders of the securities of an offeree company of the same class must be afforded equivalent treatment;** ~~moreover,~~
  - (2) if a person acquires control of a company, the other holders of securities must be protected.**
2. **(1) The holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the takeover bid;**
  - (2) ~~w~~Where it advises the holders of securities, the board of directors of the offeree company must give its views on the effects of implementation of the takeover bid on:**
    - (a) employment;**
    - (b) conditions of employment; and**
    - (c) the locations of the company's places of business.**

3. The board of directors of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the takeover bid.
4. False markets must not be created in the securities of:
- (a) the offeree company;
  - (b) of if the offeror is a company, that company; or
  - (c) of any other company concerned by the takeover bid
- in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted.
5. An offeror must announce a takeover bid only after:
- (a) ensuring that he/she the offeror can fulfil in full any cash consideration, if such is offered; and
  - (b) after taking all reasonable measures to secure the implementation of any other type of consideration.
6. An offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by a takeover bid for its securities.”.

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

## 6. The Rules and Appendices of the Code

### (a) Introduction

6.1 Section 6 of this PCP proposes that the references in the Code to “**Phase 2 European Commission proceedings**” should be retained following the UK’s withdrawal from the EU.

6.2 Section 6 also sets out the amendments proposed to be made to the Rules and Appendices of the Code.

### (b) Phase 2 European Commission proceedings

6.3 Various provisions of the Code refer to “**Phase 2 European Commission proceedings**”, as defined in the Definitions Section of the Code, i.e. proceedings initiated by the European Commission under Article 6.1(c) of Council Regulation 139/2004/EC<sup>27</sup> (the “**EU Merger Regulation**”) in respect of an offer or possible offer. The relevant provisions are as follows:

- (a) the definition of “**competition reference period**” in the Definitions Section of the Code. In summary, a competition reference period is defined as the period from the time when an announcement is made of:
  - (i) a “**Phase 2 CMA reference**” (i.e. a reference to the chair of the Competition and Markets Authority (the “**CMA**”) for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013); or
  - (ii) the initiation of Phase 2 European Commission proceedings,
 

until the conclusion of the reference or proceedings;
- (b) **Rule 12.1(b)**, which provides that, where an offer would give rise to a concentration with an EU dimension within the scope of the EU Merger Regulation, it must be a term of the offer that it must lapse if, before a particular date:
  - (i) Phase 2 European Commission proceedings are initiated; or

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<sup>27</sup> <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32004R0139>

- (ii) there is a Phase 2 CMA reference following a referral by the European Commission to a competent authority in the UK under Article 9.1 of the EU Merger Regulation;
- (c) **Rule 9.4**, which makes clear that the requirements of Rule 12.1(b) apply to a mandatory offer made pursuant to Rule 9.1;
- (d) **Rule 12.1(c)**, which provides, in summary, that, in addition to including any term required by Rule 12.1(a) (in relation to a Phase 2 CMA reference) or Rule 12.1(b) (see above), except in the case of a mandatory offer made under Rule 9, an offeror may make its offer conditional on there being no Phase 2 CMA reference, initiation of Phase 2 European Commission proceedings, or referral by the European Commission under Article 9.1 of the EU Merger Regulation;
- (e) **Rule 12.2** and the **Notes on Rule 12.2** which place limits on an offeror's ability to take steps to advance its offer during a competition reference period. In addition:
  - (i) **Note 4(c) on Rule 20.1** relates to the publication of investment analyst publications during a competition reference period;
  - (ii) **Note 4 on Rule 21.1** provides that, if the offer period has ended, General Principle 3 and Rule 21.1, which impose restrictions on the taking of "frustrating action" by the board of an offeree company during the course of an offer, will continue to apply during the competition reference period, but on a more flexible basis; and
  - (iii) **Note 5 on Rule 21.3** provides that the Panel will continue to apply Rule 21.3, which requires equality of information as between competing offerors, during a competition reference period;
- (f) **Rule 13.3(a)** and **Rule 13.3(b)** which provide, in effect, that an offer may be subject to a pre-condition which relates to:
  - (i) a decision that there will be no Phase 2 CMA reference or initiation of Phase 2 European Commission proceedings; and/or
  - (ii) if there is such a reference or initiation of proceedings, a decision by the relevant authority to allow the offer to proceed on terms satisfactory to the offeror;

- (g) **Rule 13.2**, which provides that neither a condition to an offer included pursuant to Rule 12.1(c) nor a pre-condition to an offer included pursuant to Rule 13.3(a) or Rule 13.3(b) is subject to the provisions of either:
- (i) **Rule 13.1**, which restricts the extent to which an offer may be subject to conditions which are subjective in nature; or
  - (ii) **Rule 13.5(a)**, which provides that an offeror should not invoke any condition or pre-condition so as to cause the offer not to proceed, to lapse, or to be withdrawn, unless the circumstances which give rise to the right to invoke the condition or pre-condition are of material significance to the offeror in the context of the offer; and
- (h) **Rule 31.6(a)(iii)**, which provides, in effect, that the Panel will normally consent to an extension of “Day 60” of an offer if there is a significant delay in the decision on whether there is to be a Phase 2 CMA reference or initiation of Phase 2 European Commission proceedings. In addition, **Note 5 on Rule 31.6** provides that, in the case of an extension of “Day 60” in accordance with Rule 31.6(a)(iii), the Panel will normally extend “Day 39” to the second day following the announcement of the decision on whether there is to be a Phase 2 CMA reference or initiation of Phase 2 European Commission proceedings.

6.4 In summary, the application of the Code in the case of Phase 2 European Commission proceedings is the same as the application of the Code in the case of a Phase 2 CMA reference.

6.5 The references to Phase 2 European Commission proceedings were introduced into the Code upon the EU Merger Regulation coming into force on 21 September 1990. In Statement 1990/18<sup>28</sup>, the Panel stated that it believed that it was logical to require relevant offers to lapse once the European Commission had initiated proceedings under the provisions of the EU Merger Regulation. The Code Committee notes, however, that the amendments made to the Code at that time were not made as a result of any requirement of the EU Merger Regulation or of EU law.

6.6 As explained in the Technical Notice on “*Merger review and anti-competitive activity if there’s no Brexit deal*”<sup>29</sup> published by BEIS on 13 September 2018, once the UK has left the EU, the UK will cease to be part of the EU competition regime and the CMA will be

<sup>28</sup> <http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/12/1990-18.pdf>

<sup>29</sup> <https://www.gov.uk/government/publications/merger-review-and-anti-competitive-activity-if-theres-no-brex-it-deal/merger-review-and-anti-competitive-activity-if-theres-no-brex-it-deal>

the only authority with jurisdiction to review mergers for their effects in the UK. The EU Merger Regulation will be revoked in the UK by The Competition (Amendment etc.) (EU Exit) Regulations 2019<sup>30</sup>. However, the European Commission will still investigate mergers within the EU Single Market, meaning that, in some cases, mergers that currently meet the relevant EU thresholds will be reviewed by both the CMA and the European Commission.

6.7 The Code Committee has considered whether, following the UK's withdrawal from the EU, the Code should be amended so as to remove the references to Phase 2 European Commission proceedings, such that clearance from the European Commission would be treated under the Code in the same way as clearance from any competition or anti-trust regulator other than the CMA. The consequences of making such amendments would include the following:

- (a) an offeror would no longer have the right to announce an offer subject to a pre-condition in relation to Phase 2 European Commission proceedings pursuant to Rule 13.3(a) or Rule 13.3(b). It would, however, be able to announce an offer subject to such a pre-condition pursuant to Rule 13.3(c) if the European Commission's decision was a "*material official authorisation or regulatory clearance*" and either:
  - (i) the offer was publicly recommended by the board of the offeree company; or
  - (ii) the Panel was satisfied that it would be likely to prove impossible to obtain the authorisation or clearance within the Code timetable;
- (b) an offeror would no longer be required to include a term to its offer in relation to Phase 2 European Commission proceedings pursuant to Rule 12.1(b) (and Rule 9.4) such that, if Phase 2 European Commission proceedings were to be initiated prior to the relevant date, the offer would not be required by the Code to lapse;
- (c) any condition to an offer in relation to Phase 2 European Commission proceedings as described in Rule 12.1(c), or any pre-condition as described in Rule 13.3(a) or Rule 13.3(b), would no longer be exempt, pursuant to Rule 13.2, from the requirements of Rule 13.5(a). In other words, in order to invoke such a condition or pre-condition so as to cause the offer not to proceed, to lapse, or to

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<sup>30</sup> <http://www.legislation.gov.uk/ukdsi/2019/9780111173930/contents>

be withdrawn, an offeror would need to demonstrate that the circumstances which gave rise to the right to invoke the condition or pre-condition were of material significance to it in the context of the offer; and

- (d) the Panel would no longer have the express ability, under Rule 31.6, to “freeze” “Day 39” and extend “Day 60” of the offer in the event of a delay in the decision on whether there was to be an initiation of Phase 2 European Commission proceedings.

6.8 On balance, the Code Committee considers that the references to Phase 2 European Commission proceedings should not be removed from the Code following the UK’s withdrawal from the EU for the following reasons:

- (a) as noted above, the references to Phase 2 European Commission proceedings are not included in the Code as a result of any requirement of EU law and the Code Committee considers that it is not necessary to delete them in order to maintain the coherence of the Code following the UK’s withdrawal from the EU, and that it would not be appropriate to make such amendments in that context;
- (b) the Code Committee understands that offerors consider the fact that Rule 13.2 exempts the application of the materiality test in Rule 13.5(a) from a condition or pre-condition relating to clearance by the European Commission to be an important protection against their possibly being required to proceed with an offer in circumstances where they have not received an unconditional clearance from the European Commission; and
- (c) amending Rules 12 and 13 and the other provisions of the Code referred to above so as to remove the references to Phase 2 European Commission proceedings would materially alter the existing balance that the Code strikes between the competing interests of those involved in offers.

6.9 The Code Committee acknowledges that this is a pragmatic conclusion and intends to keep the treatment of Phase 2 European Commission proceedings in the Code under review.

6.10 The Code Committee notes, however, that once the UK has withdrawn from the EU, there will be no possibility of the European Commission referring a matter back to the CMA pursuant to Article 9.1 of the EU Merger Regulation, as currently contemplated by Rules 12.1(b) and 12.1(c), and therefore proposes to delete the references to such a referral from Rules 12.1(b) and 12.1(c), as follows:

## “12.1 REQUIREMENT FOR APPROPRIATE TERM IN OFFER

...

(b) Where an offer would give rise to a concentration with an EU dimension within the scope of Council Regulation 139/2004/EC, it must be a term of the offer that if Phase 2 European Commission proceedings are initiated, ~~or there is a Phase 2 CMA reference following a referral by the European Commission under Article 9(1) to a competent authority in the United Kingdom:~~

(i) in the case of a contractual offer, the offer will lapse if this occurs before the first closing date or the date when the offer becomes or is declared unconditional as to acceptances, whichever is the later; or

(ii) in the case of an offer being implemented by way of a scheme of arrangement, the offer will lapse and the scheme will not become effective if this occurs before the shareholder meetings (as defined in Appendix 7).

(c) Except in the case of an offer under Rule 9, the offeror may, in addition, make the offer conditional on a decision being made that there will be no Phase 2 CMA reference, or initiation of Phase 2 European Commission proceedings ~~or referral by the European Commission under Article 9(1) of the Council Regulation 139/2004/EC~~. In such a case, the condition may state that the decision must be on terms satisfactory to the offeror.”.

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)?

### (c) *Bank recovery and resolution*

6.11 Article 219(2) of The Bank Recovery and Resolution (No 2) Order 2014 (SI 2014/3348)<sup>31</sup> (the “BRRO”) provides that Part 28 of the Act shall have effect as if a subsection (1A) had been inserted after section 943(1). That subsection requires that the rules of the Code (i.e. Rule 9) giving effect to the mandatory bid requirement in Article 5.1 of the Takeovers Directive must provide that they do not apply in relation to any change in interests in shares or other transaction which is effected by “*the use of resolution tools, powers and mechanisms*” within the meaning given in article 216 of the BRRO. Broadly, the effect of subsection (1A) is that, if the mechanism by which a relevant authority recovers a “failing” bank (which is a company) involves a person acquiring or consolidating a controlling

<sup>31</sup> <https://www.legislation.gov.uk/uksi/2014/3348/contents/made>

shareholding in the company, the usual requirement for that person to make a mandatory takeover bid to the other shareholders in the company will be disapplied.

- 6.12 Article 219(2) of the BRRO, as implemented by Note 19 on Rule 9.1, implements the final paragraph of Article 4.5 of the Takeovers Directive. That final paragraph was introduced into the Takeovers Directive by Article 119 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms<sup>32</sup> (the “**Bank Recovery and Resolution Directive**”) and provides that:

“Member States shall ensure that Article 5(1) of this Directive does not apply in the case of use of resolution tools, powers and mechanisms provided for in Title IV of [the Bank Recovery and Resolution Directive].”.

- 6.13 Note 19 on Rule 9.1 therefore provides as follows:

**“19. Bank recovery and resolution**

*In the case of a company to which the [Takeovers] Directive applies, Rule 9.1 does not apply in relation to any change in interests in shares or other transaction which is effected by the use of resolution tools, powers and mechanisms (within the meaning given in article 216 of the Bank Recovery and Resolution (No. 2) Order 2014).”.*

Given that the requirement to disapply the mandatory bid rule in certain circumstances derives from the Takeovers Directive, Note 19 on Rule 9.1 applies only in the case of a company to which that Directive applies (and not in the case of other companies to which the Code applies but to which the Takeovers Directive does not apply).

- 6.14 A draft of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018<sup>33</sup> (the “**BRR Regulations**”) was published on 8 October 2018. Pursuant to paragraph 110 of Schedule 3 to the BRR Regulations, upon the BRR Regulations coming into force, article 219(2) of the BRRO will be amended as follows:

“(2) Part 28 of the Companies Act 2006 (Takeovers etc) has effect as if, in section 943 (rules), after subsection (1) there were inserted-

“(1ZA) Rules giving effect to Article 5.1 of the Takeovers Directive Rules made in accordance with paragraph 7(1) and (2) of Part 2 of Schedule 1C must provide that they do not apply in relation to any change in interests in shares or other transaction which is effected by the use of resolution tools, powers and mechanisms (within the meaning

<sup>32</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0059>

<sup>33</sup> <https://www.gov.uk/government/publications/draft-bank-recovery-and-resolution-and-miscellaneous-provisions-amendment-eu-exit-regulations-2018>

given in article 216 of the Bank Recovery and Resolution (No 2) Order 2014).”.

- 6.15 Upon the BRR Regulations coming into force, no material change will be required to be made to Note 19 on Rule 9.1. However, the reference to the Takeovers Directive will be required to be amended so as to refer instead to the new Schedule 1C to the Act (as introduced by the Takeovers (EU Exit) Regulations), as follows:

**“19. Bank recovery and resolution**

*In the case of a company to which ~~the Directive~~ Schedule 1C to the Act applies, Rule 9.1 does not apply in relation to any change in interests in shares or other transaction which is effected by the use of resolution tools, powers and mechanisms (within the meaning given in article 216 of the Bank Recovery and Resolution (No. 2) Order 2014).”.*

**(d) “Breakthrough”**

- 6.16 Article 11 of the Takeovers Directive sets out the “**breakthrough**” rule. Paragraphs 1230 to 1232 of the Explanatory Notes to the Act summarise Article 11, and the UK’s implementation of Article 11, as follows:

**“1230.** Article 11 of the Takeovers Directive seeks to override, in certain circumstances relating to a takeover, a number of defensive devices that may be adopted by companies prior to the bid, such as differential share structures under which minority shareholders may exercise disproportionate voting rights; restrictions on transfer of shares in the company articles or in contractual agreements; and limitations on share ownership.

**1231.** There are currently no restrictions on the way that UK companies which are admitted to trading on a regulated market can structure their share capital and control. However, market pressure brought to bear, in particular, by institutional investors has ensured that there are now few UK listed companies with differential voting structures.

**1232.** As permitted by Article 12 of the Directive, it has been decided not to apply the provisions of Article 11 in all cases but instead to include in the Act (sections 966 to 972) provision for companies with voting shares traded on a regulated market to opt in to its provisions should they choose to do so.”.

- 6.17 Article 6.3(e) of the Takeovers Directive requires an offer document to state at least:

“the compensation offered for the rights which might be removed as a result of the breakthrough rule laid down in Article 11(4), with particulars of the way in which that compensation is to be paid and the method employed in determining it”.

Rule 24.3(d)(xiv) gives effect to this requirement.

- 6.18 Upon the Takeovers (EU Exit) Regulations coming into force, Article 6.3(e) of the Takeovers Directive will, in effect, be replaced by paragraph 12(4)(e) of the new Schedule 1C to the Act. Paragraph 12(4)(e) provides that the Code must ensure that the offer document must state at least:

“the compensation offered for the rights which might be removed as a result of a company’s opting-in resolution under Chapter 2, with particulars of the way in which that compensation is to be paid and the method employed in determining it”.

- 6.19 The Code Committee proposes to amend Rule 24.3(d)(xiv) in accordance with paragraph 12(4)(e) of the new Schedule 1C to the Act, as follows:

**“(d) the offer document (including, where relevant, any revised offer document) must include:**

...

**(xiv) the compensation (if any) offered for the ~~removal of rights pursuant to Article 11 of the Directive~~ rights which might be removed as a result of any opting-in resolution under Chapter 2 of Part 28 of the Act together with particulars of the way in which the compensation is to be paid and the method employed in determining it;”.**

- (e) *Making documents, announcements and information available to shareholders and other persons***

- 6.20 Rule 30.4 requires that, if documents, announcements or information are required to be sent, published or made available to offeree company shareholders or employee representatives, they must be sent, published or made available to all such persons, including those who are located outside the EEA, unless there is sufficient objective justification for not doing so. As explained in paragraph 5.6 of Section C of PCP 2005/5, Rule 30.4 satisfies the requirements of Articles 8.2, 5.1 and 3.1(a) of the Takeovers Directive.

- 6.21 The Note on Rule 30.4 sets out circumstances in which there would be sufficient objective justification for not applying Rule 30.4 in a non-EEA jurisdiction and also provides the Panel with a general power to grant a dispensation in cases which do not fall within those circumstances.

- 6.22 In addition, the Note on Rule 30.4 provides that the Panel will not normally grant any dispensation from the requirements of Rule 30.4 in relation to shareholders or employee representatives who are located within the EEA. In RS 2005/5, the Code Committee

explained that, in the light of the free movement provisions of EU law, the increasingly harmonised state of company law within the EEA, and the objectives of the Takeovers Directive, it would be unlikely that the criteria set out in the Note on Rule 30.4 for a dispensation would be met in respect of an EEA jurisdiction.

- 6.23 The Code Committee considers that, following the UK's withdrawal from the EU, these factors will no longer apply. The Code Committee therefore believes that, upon the Takeovers Directive ceasing to apply in the UK, the references to the EEA in Rule 30.4 and in the Note on Rule 30.4 should be amended so as to refer only to the jurisdictions in which the Code will then apply, i.e. the UK, the Channel Islands and the Isle of Man.
- 6.24 Following this amendment, it will therefore be possible to seek a dispensation from the requirements of Rule 30.4 in relation to shareholders or employee representatives who are located within the EEA on the same basis as in relation to shareholders and employee representatives located in other overseas jurisdictions. The Code Committee considers that such a dispensation would be unlikely to be granted in the short term following the UK's withdrawal from the EU, assuming that there is no immediate change in the current convergence of laws. However, the ability to obtain a dispensation might become more likely over time if law in the UK and law in EEA Member States diverges.
- 6.25 The Code Committee therefore proposes to amend Rule 30.4, and the Note on Rule 30.4, as follows:

**"30.4 MAKING DOCUMENTS, ANNOUNCEMENTS AND INFORMATION AVAILABLE TO SHAREHOLDERS, PERSONS WITH INFORMATION RIGHTS AND EMPLOYEE REPRESENTATIVES (OR EMPLOYEES)**

**If a document, an announcement or any information is required to be sent, published or made available to:**

- (a) shareholders in the offeree company;**
- (b) persons with information rights; or**
- (c) employee representatives (or employees) of the offeror or the offeree company,**

**it must be sent, published or made available (as the case may be) to all such persons, including those who are located outside the United Kingdom, the Channel Islands and the Isle of Man—EEA, unless there is sufficient objective justification for not doing so.**

**NOTE ON RULE 30.4*****Shareholders, persons with information rights and employee representatives (or employees) outside the UK, the Channel Islands and the Isle of Man-EEA***

*Where local laws or regulations of a particular ~~non-EEA~~-jurisdiction outside the United Kingdom, the Channel Islands and the Isle of Man may result in a significant risk of civil, regulatory or, particularly, criminal exposure for the offeror or the offeree company if the information or documentation is sent, published or made available to shareholders in that jurisdiction without any amendment, and unless ~~they~~it can avoid such exposure by making minor amendments to the information being provided or documents being sent, published or made available either:*

*(a) the offeror or the offeree company need not provide such information or send, publish or make such information or documents available to registered shareholders of the offeree company or persons with information rights who are located in that jurisdiction if less than 3% of the shares of the offeree company are held by registered shareholders located there at the date on which the information is to be provided or the information or documents are to be sent, published or made available (and there is no need to consult the Panel in these circumstances); or*

*(b) in all other cases, the Panel may grant a dispensation where it would be proportionate in the circumstances to do so having regard to the cost involved, any resulting delay to the transaction timetable, the number of registered shareholders in the relevant jurisdiction, the number of shares involved and any other factors invoked by the offeror or the offeree company.*

*Similar dispensations will apply in respect of information or documents which are sent, published, provided or required to be made available to employee representatives (or employees) of the offeror or the offeree company.*

*The Panel will not normally grant any dispensation in relation to shareholders, persons with information rights, or employee representatives (or employees) of the offeree company who are located within the United Kingdom, the Channel Islands or the Isle of Man-EEA.”.*

6.26 In addition, the Code Committee proposes to make consequential amendments to the following provisions of the Code which refer to the EEA, as set out in **Appendix D**:

- (a) Note 2 on Rule 2.11 (heading);
- (b) Note 5 on Rule 20.1 (heading); and
- (c) Note 4 on Rule 26 (heading and text).

**(f) Bid documentation offence**

6.27 Section 953 of the Act (which is referred to in section 10(e) (*Bid documentation rules*) of the Introduction to the Code) provides that it is an offence for a person not to comply with:

- (a) “**offer document rules**”, i.e. rules of the Code designated by the Panel as rules that give effect to Article 6.3 of the Takeovers Directive; and
- (b) “**response document rules**”, i.e. rules of the Code designated by the Panel as rules that give effect to the first sentence of Article 9.5 of the Takeovers Directive.

6.28 The provisions of the Code which have been designated as offer document rules and response document rules are set out in Appendix 6 of the Code.

6.29 Upon the Takeovers (EU Exit) Regulations coming into force:

- (a) the requirements of Article 6.3 of the Takeovers Directive will be replaced by the requirements of paragraph 12(4) of the new Schedule 1C to the Act, and the definition of “offer document rules” in section 953 of the Act will be amended accordingly (as set out in **Appendix B**); and
- (b) the requirements of the first sentence of Article 9.5 of the Takeovers Directive will be replaced by the requirements of paragraph 18(1) of the new Schedule 1C to the Act, and the definition of “response document rules” in section 953 of the Act will be amended accordingly (as set out in **Appendix B**).

Appendix 6 of the Code will be required to be amended to reflect these changes.

6.30 The Code Committee therefore proposes to make the following amendments to Appendix 6 of the Code:

**“APPENDIX 6**

**BID DOCUMENTATION RULES FOR THE PURPOSES OF SECTION 953 OF  
THE COMPANIES ACT 2006**

**For the purposes of ~~Section 953 of the Companies Act 2006~~, “offer document rules” and “response document rules” are those giving effect made in accordance with, respectively, ~~to Article 6(3) and the first sentence of Article 9(5) of the Directive paragraph 12(4) and paragraph 18(1) of Schedule 1C to the Act~~ (see section 10(e) of the Introduction). The relevant parts of Rules 24 and 25 are set out below. Rule 27 is also relevant to the extent set out in section 10(e) of the Introduction.**

**“Offer document rules”**

<b><u>ArticleParagraph</u></b>	<b>Those parts of the Rule set out below which give effect to the <u>paragraph Article</u></b>
<i>Article 6(3)Paragraph 12(4)(a)</i>	Rule 24.3(d)(v)
<i>Article 6(3)Paragraph 12(4)(b)</i>	Rule 24.3(d)(ii)
<i>Article 6(3)Paragraph 12(4)(c)</i>	Rule 24.3(d)(iv)
<i>Article 6(3)Paragraph 12(4)(d)</i>	Rule 24.3(d)(v) and Note 4 on Rule 24.3
<i>Article 6(3)Paragraph 12(4)(e)</i>	Rule 24.3(d)(xiv)
<i>Article 6(3)Paragraph 12(4)(f)</i>	Rule 24.3(d)(iv)
<i>Article 6(3)Paragraph 12(4)(g)</i>	Rule 24.4(a)(i), (ii)
<i>Article 6(3)Paragraph 12(4)(h)</i>	Rule 24.3(d)(vi)
<i>Article 6(3)(i)Paragraphs 12(4)(i) to (l)</i>	Rule 24.2
<i>Article 6(3)(j)Paragraph 12(4)(m)</i>	Rule 24.7 (first phrase)
<i>Article 6(3)(k)Paragraph 12(4)(n)</i>	Rule 24.3(d)(xi)
<i>Article 6(3)(l)Paragraph 12(4)(o)</i>	Rule 24.3(f)
<i>Article 6(3)(m)Paragraph 12(4)(p)</i>	Rule 24.3(d)(iii) and Note 3 on Rule 24.3
<i>Article 6(3)(n)Paragraph 12(4)(q)</i>	Rule 24.3(d)(xiii)

**“Response document rules”**

<i>Article 9(5), first sentenceParagraph 18(1)</i> .	Rule 25.1 and Rule 25.2(a)
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- 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?

## **7. Assessment of the impact of the proposals**

- 7.1 The majority of the changes to the Code proposed in this PCP are consequential upon the UK's withdrawal from the EU, and the related changes to relevant legislation, and will not materially alter the effect of the provisions in question.
- 7.2 The deletion of section 2(d) (*Transitional provisions for offers which are not takeover bids under the Directive*) of the Introduction to the Code is not directly related to the UK's withdrawal from the EU but the Code Committee considers that this is an appropriate time to delete a provision which it considers to be unnecessary.
- 7.3 An effect of the deletion of the shared jurisdiction rules in section 3(a)(iii) of the Introduction to the Code, as proposed in Section 3 of the PCP, will be that the Code will no longer apply to offers for certain shared jurisdiction companies upon the Takeovers Directive ceasing to apply in the UK following its withdrawal from the EU. The Code Committee recognises that the companies in question, and their shareholders, might prefer the Code to continue to apply to them after the UK has exited the EU. However, it believes that the deletion of the shared jurisdiction rules is a natural consequence of the UK's decision to exit the EU and does not believe that there is a compelling argument for the Code to be amended so as to ensure that an offer for such a company should continue to be regulated by the Panel post-exit.

**APPENDIX A**

**The Takeovers (Amendment) (EU Exit) Regulations 2019**

See overleaf

*This draft Statutory Instrument supersedes the draft of the same title which was laid before Parliament on 29th October 2018 and published on 30th October 2018 (ISBN 978-0-11-117392-3). It is being issued free of charge to all known recipients of that draft Statutory Instrument.*

*Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2019 No.**

**EXITING THE EUROPEAN UNION**

**COMPANIES**

**The Takeovers (Amendment) (EU Exit) Regulations 2019**

*Made* - - - -

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*Coming into force in accordance with regulation 1*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018<sup>(a)</sup>.

In accordance with paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018 a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

**Citation and commencement**

1. These Regulations may be cited as the Takeovers (Amendment) (EU Exit) Regulations 2019 and come into force on exit day.

**Amendments to the Companies Act 2006**

2. The Companies Act 2006<sup>(b)</sup> is amended as follows.

3. In section 943—

(a) for subsection (1), substitute—

“(1) The Panel must make rules—

(a) giving effect to the general principles in Part 1 of Schedule 1C, and

(b) in accordance with Part 2 of that Schedule.”;

(b) after subsection (1), insert—

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(a) 2018 c.16.

(b) 2006 c.46.

“(1A) Rules must specify the percentage of voting rights that gives a person control of a company for the purposes of this Chapter and how it is to be calculated.”;

- (c) in subsection (7), for “of the Takeovers Directive” substitute “given by paragraph 20(1) of Schedule 1C”;
- (d) omit subsection (8).

**4.** In section 948(a), in subsection (7) omit paragraphs (b) and (c).

**5.** In section 950(b), omit subsection (1)(b).

**6.** In section 953, in subsection (9)—

- (a) in the definition of “offer document”, for “giving effect to Article 6.2 of the Takeovers Directive” substitute “made in accordance with paragraph 12(1) to (3) of Schedule 1C;”;
- (b) for the definition of “offer document rules”, substitute—

““offer document rules” means rules under section 943(1) designated as rules made in accordance with paragraph 12(4) of Schedule 1C;”;
- (c) in the definition of “response document”, for “giving effect to Article 9.5 of that Directive” substitute “made in accordance with paragraph 18 of Schedule 1C;”;
- (d) for the definition of “response document rules”, substitute—

““response document rules” means rules under section 943(1) designated as rules made in accordance with paragraph 18(1) of Schedule 1C;”;
- (e) in the definition of “takeover bid”, for “same meaning as in that Directive” substitute “meaning given by paragraph 20(1) of Schedule 1C;”.

**7.—**(1) Section 966 is amended as follows.

(2) In subsection (1), for “three” substitute “five”.

(3) In subsection (2), before “regulated market” insert “UK”.

(4) For subsection (3) substitute—

“(3) The second condition is that the company’s articles of association do not contain any restrictions on the transfer of shares or, if they do contain any such restrictions, provide that they are not to apply to—

- (a) transfers to the offeror, or at the offeror’s direction to another person, during the offer period, or
- (b) transfers to any person at a time during the offer period when the offeror holds shares amounting to not less than 75% in value of all the voting shares in the company.

(3A) The third condition is that the company’s articles of association—

- (a) do not contain any restrictions on rights to vote at a general meeting of the company, or
- (b) if they do contain any such restrictions, provide that they are not to have effect on rights to vote at a general meeting of the company that—
  - (i) decides whether to take any action which might result in the frustration of the takeover bid, or
  - (ii) is held at a time when the offeror holds shares amounting to not less than 75% in value of all the voting shares in the company,

unless the restrictions are compensated for by specific pecuniary advantages.

(3B) The fourth condition is that the company’s articles of association do not contain any other provision which would be incompatible with the requirements of subsection (3C).

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(a) Section 948(7) was amended by the Financial Services Act 2012 (c. 21) Schedule 18, Part 2, paragraphs 110 and 118.

(b) Section 950 was amended by the Financial Services Act 2012 (c. 21) Schedule 18, Part 2, paragraphs 110 and 119.

(3C) Those requirements are—

- (a) multiple-vote shares are to carry only one vote each at a general meeting of the company that decides whether to take any action which might result in the frustration of the takeover bid,
- (b) multiple-vote shares are to carry only one vote each at a general meeting of the company which—
  - (i) is the first such meeting to be held after the end of the offer period,
  - (ii) is held at a time when the offeror holds shares amounting to not less than 75% in value of all the voting shares in the company, and
  - (iii) is called at the offeror’s request under section 969 in order to amend the company’s articles of association or to appoint or remove members of the board of directors, and
- (c) at a time during the offer period when the offeror holds shares amounting to not less than 75% in value of all the voting shares in the company, shareholders are not to have any extraordinary rights to appoint or remove members of the board of directors.

(3D) The references in subsections (3A)(b) and (3C)(a) to voting at a general meeting of the company that decides whether to take any action which might result in the frustration of the takeover bid includes a reference to voting on a written resolution concerned with that question.

(3E) For the purposes of subsections (3A)(b)(i) and (3C)(a), action which might result in the frustration of the takeover bid is any action of that kind specified in rules under section 943(1) made in accordance with paragraphs 17 or 18 of Schedule 1C.

(3F) The references in subsections (3), (3A) and (3C) to voting shares in the company do not include—

- (a) debentures, or
- (b) shares that, under the company’s articles of association, do not normally carry rights to vote at its general meetings (for example, shares carrying rights to vote that, under those articles, arise only where specified pecuniary advantages are not provided).

(3G) In subsection (3C), “multiple-vote shares” means shares included in a distinct and separate class and carrying more than one vote each.”.

(5) In subsection (4), for “third” substitute “fifth”.

(6) Omit subsection (6).

**8.** In section 967—

- (a) in subsection (3), for “second and third” substitute “second, third, fourth and fifth”;
- (b) in subsection (4), before “regulated market” insert “UK”;
- (c) in subsection (7), for “second condition” substitute “second, third or fourth condition”.

**9.** In section 968(5) for “giving effect to Article 9 of the Takeovers Directive” substitute “made in accordance with paragraph 17 or 18 of Schedule 1C”.

**10.** In section 970—

- (a) in subsection (1), omit paragraph (b) and the “and” after paragraph (a);
- (b) in subsection (2), omit the words from “and,” to the end.

**11.** In section 971(1)—

- (a) omit the definitions of “offeror” and “takeover bid”;
- (b) at the appropriate place, insert—
  - ““offeror”, in relation to a takeover bid, means the person making the bid;”;

- (c) at the appropriate place, insert—
  - ““takeover bid” has the meaning given by paragraph 20(1) of Schedule 1C;”;
- (d) in the definition of “offer period”, for the words from “giving effect to Article 7.1” to the end substitute “made in accordance with paragraph 13 of Schedule 1C;”;
- (e) omit the definition of “the Takeovers Directive”.

**12.** In section 978(1)(c)(ii), for “an EEA State” substitute “the United Kingdom”.

**13.** In section 980(3)(a), for the words from “that give effect” to the end substitute “made in accordance with paragraph 13 or 14 of Schedule 1C”.

**14.** After Schedule 1B, insert the Schedule 1C set out in the Schedule to these Regulations.

**15.** In Schedule 2(b), in Part 2, in Section (E) (General), omit paragraph 5.

**16.** In Schedule 8(c)—

- (a) in the entry for “company”, after the entry in relation to Part 26, insert—

“—in Schedule 1C (see Chapter 1 of Part 28) paragraph 21 of Schedule 1C”;

- (b) in the entry for “offeror”, before the entry in relation to Chapter 2 of Part 28, insert—

“—in Schedule 1C (see Chapter 1 of Part 28) paragraph 20(1) of Schedule 1C”;

- (c) for the entry for “takeover bid (in Chapter 2 of Part 28)” substitute—

“takeover bid	
—in section 943	section 943(7)
—in Schedule 1C	paragraph 20(1) of Schedule 1C
—in section 953	section 953(9)
—in Chapter 2 of Part 28	section 971(1)”;

- (d) omit the entry for “the Takeovers Directive”;
- (e) in the entry for “voting rights”, before the entry in relation to Chapter 2 of Part 28, insert—

“—in Schedule 1C (see Chapter 1 of Part 28) paragraph 20(1) of Schedule 1C”.

**Amendments to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008**

**17.** The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008(d) are amended as follows.

**18.** In Schedule 7, in Part 6, in paragraph 13(6)—

- (a) in the definition of “takeover bid”, for “the Takeovers Directive” substitute “paragraph 20(1) of Schedule 1C to the Companies Act 2006(e)”;

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(a) There is an amending instrument but it is not relevant.  
 (b) The original Schedule 2 was substituted by a new Schedule 2 containing new Part headings by S.I. 2009/1208.  
 (c) There are amending instruments but they are not relevant.  
 (d) S.I. 2008/410.  
 (e) 2006 c.46.

- (b) omit the definition of “the Takeovers Directive”.

### **Amendment to the Unregistered Companies Regulations 2009**

- 19.** The Unregistered Companies Regulations 2009(a) are amended as follows.
- 20.** In Schedule 1, in paragraph 14, at the beginning insert—  
“(A1) Schedule 1C to the Companies Act 2006 applies to unregistered companies.”.

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy.

Date *Name*  
Parliamentary Under Secretary of State  
Department for Business, Energy and Industrial Strategy

## **SCHEDULE**

Regulation 14

Schedule to be inserted after Schedule 1B to the Companies Act 2006

### **“SCHEDULE 1C**

Section 943

Rules of the Takeover Panel: general principles and other provision

#### **PART 1**

##### **General principles**

- 1.**—(1) All holders of the securities of an offeree company of the same class must be afforded equivalent treatment.
- (2) If a person acquires control of a company, the other holders of securities must be protected.
- 2.**—(1) The holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the takeover bid.
- (2) Where it advises the holders of securities, the board of directors of the offeree company must give its views on the effects of implementation of the takeover bid on—
- (a) employment,
  - (b) conditions of employment, and
  - (c) the locations of the company’s places of business.
- 3.** The board of directors of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the takeover bid.
- 4.** False markets must not be created in the securities of—
- (a) the offeree company,

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(a) S.I. 2009/2436.

- (b) if the offeror is a company, that company, or
- (c) any other company concerned by the takeover bid,

in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted.

**5.** An offeror must announce a takeover bid only after—

- (a) ensuring that the offeror can fulfil in full any cash consideration, if such is offered, and
- (b) taking all reasonable measures to secure the implementation of any other type of consideration.

**6.** An offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by a takeover bid for its securities.

## PART 2

### Other provision

*Protection of minority shareholders, the mandatory takeover bid and the equitable price*

**7.—(1)** Rules must ensure that a person (“P”) is required to make a takeover bid (“a mandatory takeover bid”) where—

- (a) P, or any person acting in concert with P, has acquired securities in a company, and
- (b) the acquired securities, when added to any existing securities held by P or by persons acting in concert with P, directly or indirectly give P control of that company.

(2) Rules must ensure that the mandatory takeover bid must be addressed at the earliest opportunity to all of the holders of those securities for all their holdings at the equitable price.

(3) Rules must ensure that where control has been acquired following a voluntary takeover bid to all the holders of securities for all their holdings, the obligation referred to in sub-paragraph (1) to make a mandatory takeover bid no longer applies.

**8.—(1)** For the purposes of paragraph 7, “the equitable price” is the highest price paid for the same securities by the offeror, or by persons acting in concert with the offeror, over a period, determined by rules, of not less than 6 and not more than 12 months before the mandatory takeover bid is announced.

(2) Rules must ensure that if, after the mandatory takeover bid has been made public and before the offer closes for acceptance, the offeror or any person acting in concert with the offeror purchases securities at a price higher than the offer price, the offeror must increase the offer consideration so that it is not less than the highest price paid for the securities so acquired.

(3) Rules may confer power on the Panel to adjust the equitable price in circumstances and in accordance with criteria that are clearly determined.

(4) Rules must ensure that any decision by the Panel to adjust the equitable price must be substantiated and made public.

**9.—(1)** Rules must ensure that the offeror may offer by way of consideration for the securities which are the subject of the mandatory takeover bid—

- (a) securities,
- (b) cash, or
- (c) a combination of both.

(2) Rules must ensure that cash must be offered—

- (a) as an alternative where the consideration offered does not consist of liquid securities admitted to trading on a UK regulated market, and
  - (b) at least as an alternative where the securities purchased for cash over a relevant period by the offeror or by persons acting in concert with the offeror, taken together, carry 5% or more of the voting rights in the offeree company.
- (3) “A relevant period” is a period—
- (a) beginning at the same time as the period determined in accordance with paragraph 8(1), and
  - (b) ending when the offer closes for acceptance.
- (4) Rules may require that cash must be offered, at least as an alternative, in all cases.

**10.** Any rules that make provision to protect the interests of the holders of securities that goes beyond the provision referred to in paragraphs 7 to 9 must not hinder the normal course of a takeover bid.

*Information concerning takeover bids*

**11.—(1)** Rules must ensure that a decision to make a takeover bid must be made public without delay and the Panel must be informed of the bid.

- (2) Rules may require that the Panel is informed before such a decision is made public.
- (3) Rules must ensure that, as soon as the takeover bid has been made public, the boards of directors of the offeree company and of the offeror must inform—
  - (a) the representatives of their respective employees, or
  - (b) where there are no such representatives, the employees themselves.

**12.—(1)** Rules must ensure that an offeror must draw up and make public in good time an offer document containing the information necessary to enable the holders of the offeree company’s securities to reach a properly informed decision on the takeover bid.

- (2) Rules must ensure that, before the offer document is made public, the offeror must provide a copy to the Panel.
- (3) Rules must ensure that, when the offer document is made public, the boards of directors of the offeree company and of the offeror must communicate it—
  - (a) to the representatives of their respective employees, or
  - (b) where there are no such representatives, to the employees themselves.
- (4) Rules must ensure that the offer document must state at least—
  - (a) the terms of the takeover bid,
  - (b) the identity of the offeror and, where the offeror is a company, the company’s type, name and registered office,
  - (c) the securities or, where appropriate, the class or classes of securities for which the takeover bid is made,
  - (d) the consideration offered for each security or class of securities and, in the case of a mandatory takeover bid, the method employed in determining it, with particulars of the way in which that consideration is to be paid,
  - (e) the compensation offered for the rights which might be removed as a result of a company’s opting-in resolution under Chapter 2, with particulars of the way in which that compensation is to be paid and the method employed in determining it,
  - (f) the maximum and minimum percentages or quantities of securities which the offeror undertakes to acquire,
  - (g) details of any existing holdings of the offeror, and of any person acting in concert with the offeror, in the offeree company,
  - (h) all the conditions to which the takeover bid is subject,
  - (i) the offeror’s intentions with regard to the future business of the offeree company,

- (j) the offeror's intentions with regard to the safeguarding of the jobs of the employees and management of the offeree company, including any material change in the conditions of employment,
- (k) the offeror's strategic plans for the offeree company, and their likely repercussions on employment and the locations of the company's places of business,
- (l) if the offeror is a company and in so far as it is affected by the takeover bid—
  - (i) the offeror's intentions with regard to its future business,
  - (ii) the offeror's intentions with regard to the safeguarding of the jobs of its employees and management, including any material change in the conditions of employment, and
  - (iii) the offeror's strategic plans for itself, and their likely repercussions on employment and the locations of its places of business,
- (m) the time allowed for acceptance of the takeover bid,
- (n) where the consideration offered includes securities of any kind, information concerning those securities,
- (o) information concerning the financing for the takeover bid,
- (p) the identity of persons acting in concert with the offeror or with the offeree company and, in the case of companies, the types, names, registered offices and relationships with the offeror and, where possible, with the offeree company, and
- (q) the national law which will govern contracts concluded between the offeror and the holders of the offeree company's securities as a result of the takeover bid and the competent courts.

*Time allowed for acceptance*

**13.—**(1) Rules must ensure that, subject to any provision made in accordance with paragraph 14, the time allowed for the acceptance of a takeover bid must not be less than the period of two weeks nor more than the period of 10 weeks beginning with the day after the date of publication of the offer document.

(2) Rules may provide that the maximum period allowed for acceptance of a takeover bid may be extended on the condition that the offeror gives at least two weeks' notice of the offeror's intention to close the takeover bid.

**14.—**(1) Rules may contain provision changing the time allowed for the acceptance of a takeover bid in specific cases.

(2) Rules may confer power on the Panel to grant a derogation from the time allowed for the acceptance of a takeover bid in order to allow the offeree company to call a general meeting of the company to consider the takeover bid.

*Disclosure*

**15.** Rules must ensure that a takeover bid must be made public in such a way as to ensure market transparency and integrity for the securities of—

- (a) the offeree company,
- (b) if the offeror is a company, that company, or
- (c) any other company affected by the takeover bid,

in particular in order to prevent the publication or dissemination of false or misleading information.

**16.** Rules must ensure that all information and documents required by provision made in accordance with paragraphs 11 and 12 must be disclosed in such a manner as to ensure that they are both readily and promptly available—

- (a) to the holders of securities admitted to trading on a UK regulated market who are located in the United Kingdom, and

- (b) to the representatives of the employees of the offeree company and of the offeror, or where there are no such representatives, to the employees themselves.

*Obligations of the board of directors of the offeree company*

**17.**—(1) Rules must ensure that, during the relevant period, the board of directors of the offeree company must obtain the prior authorisation of a general meeting of the company given for this purpose—

- (a) before taking any action, other than seeking alternative takeover bids, which may result in the frustration of the bid, and
- (b) in particular, before issuing any shares which may result in a lasting impediment to the offeror’s acquiring control of the offeree company.

(2) “The relevant period”—

- (a) begins when the board of directors of the offeree company receives the information that a decision to make a takeover bid has been made public, or at such earlier stage as rules may determine, and
- (b) ends when the result of the bid is made public or the bid lapses.

(3) Rules must ensure that, with regard to decisions taken before the beginning of the relevant period and not yet partly or fully implemented, a general meeting of the company must approve or confirm any decision—

- (a) which does not form part of the normal course of the company’s business, and
- (b) the implementation of which may result in the frustration of the takeover bid.

(4) For the purposes of this paragraph, where a company has a two-tier board structure, “board of directors” means both the management board and the supervisory board.

**18.**—(1) Rules must ensure that the board of directors of the offeree company must draw up and make public a document setting out its opinion of the takeover bid and the reasons for the opinion, including its views on—

- (a) the effects of implementation of the takeover bid on all the company’s interests and specifically employment, and
- (b) the offeror’s strategic plans for the offeree company and their likely repercussions on employment and the locations of the company’s places of business as set out in the offer document in accordance with paragraph 12(4)(k).

(2) Rules must ensure that the board of directors of the offeree company must at the same time communicate that opinion—

- (a) to the representatives of its employees, or
- (b) where there are no such representatives, to the employees themselves.

(3) Rules must ensure that, where the board of directors of the offeree company receives in good time a separate opinion from the representatives of its employees on the effects of the takeover bid on employment, that opinion must be appended to the document.

*Other rules applicable to the conduct of takeover bids*

**19.** Rules must make provision governing the conduct of takeover bids which must address at least—

- (a) the lapsing of takeover bids,
- (b) the revision of takeover bids,
- (c) competing takeover bids,
- (d) the disclosure of the results of takeover bids, and
- (e) the irrevocability of takeover bids and the conditions permitted.

*Interpretation*

**20.**—(1) In this Schedule—

“offer document” means a document required to be published by rules made in accordance with paragraph 12;

“offeree company” means a company, the securities of which are the subject of a takeover bid;

“offeror”, in relation to a takeover bid, means the person making the bid;

“rules” means rules made by the Panel under section 943(1);

“securities” means transferable securities carrying voting rights in a company;

“takeover bid” means a public offer made to the holders of the securities of a company to acquire some or all of those securities, whether mandatory or voluntary, which follows or has as its objective the acquisition of control of that company, but does not include cases where the offer is made by the company itself;

“voting rights” means rights to vote at general meetings of the company in question.

(2) For the purposes of this Schedule, securities are of one class if the rights attached to them are in all respects uniform; and for that purpose the rights attached to securities are not regarded as different from those attached to other securities by reason only that they do not carry the same rights to dividends in the twelve months immediately following their allotment.

(3) In this Schedule, “persons acting in concert” means persons who co-operate with the offeror or the offeree company on the basis of an agreement or understanding aimed at—

- (a) acquiring control of the offeree company, or
- (b) frustrating the successful outcome of a takeover bid.

(4) For the purposes of this Schedule, where a person (“A”) is a subsidiary undertaking of another person (“B”) within the meaning of section 420 of the Financial Services and Markets Act 2000<sup>(a)</sup> (but disregarding subsections (2)(b) and (3) of that section, and subsections (2)(c) and (4)(b) of section 1162 of the Companies Act 2006)—

- (a) A is deemed to be acting in concert with B and with any other subsidiary undertakings of B, and
- (b) B and those subsidiary undertakings are deemed to be acting in concert with A.

**21.—**(1) In this Schedule, other than in the listed provisions, “company” means a company that has securities admitted to trading on a UK regulated market.

(2) The listed provisions are—

- paragraph 4(b) and (c);
- paragraph 12(4)(b), (l) and (p);
- paragraph 15(b) and (c).

(3) Section 1 (meaning of “company”) does not apply for the purposes of the listed provisions.”

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made in exercise of the powers in section 8 of the European Union (Withdrawal) Act 2018 (c.16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

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(a) 2000 c.8. Section 420(1) was amended by the Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Schedule 1(2), paragraph 212(1).

These Regulations make amendments to Part 28 of the Companies Act 2006 which relates to company takeovers. The Schedule to these Regulations contains a new Schedule to be added to the Companies Act 2006.

An impact assessment has not been produced for this instrument as no significant impact on the private or voluntary sector is foreseen.

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## APPENDIX B

### Amendments to be made to Part 1 of Chapter 28 of the Companies Act 2006 by The Takeovers (Amendment) (EU Exit) Regulations 2019

#### 943 Rules

~~(1) The Panel must make rules giving effect to Articles 3.1, 4.2, 5, 6.1 to 6.3, 7 to 9 and 13 of the Takeovers Directive.~~

(1) The Panel must make rules-

(a) giving effect to the general principles in Part 1 of Schedule 1C, and

(b) in accordance with Part 2 of that Schedule.

(1A) Rules must specify the percentage of voting rights that gives a person control of a company for the purposes of this Chapter and how it is to be calculated.

...

~~(7) In this section "takeover bid" includes a takeover bid within the meaning of the Takeovers Directive given by paragraph 20(1) of Schedule 1C.~~

~~(8) In this Chapter "the Takeovers Directive" means Directive 2004/25/EC of the European Parliament and of the Council.~~

...

#### 948 Restrictions on disclosure

...

(7) The authorities within this subsection are-

(a) the Financial Conduct Authority;

(aa) the Prudential Regulation Authority;

(ab) the Bank of England;

~~(b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;~~

~~(c) any other person or body that exercises functions of a public nature, under legislation in an EEA State other than the United Kingdom, that are similar to the Panel's functions or those of the Financial Conduct Authority or the Prudential Regulation Authority or similar to the regulatory functions of the Bank of England.~~

...

**950 Panel's duty of co-operation**

- (1) The Panel must take such steps as it considers appropriate to co-operate with-
- (a) the Financial Conduct Authority;
  - (aa) the Prudential Regulation Authority;
  - (ab) the Bank of England;
  - ~~(b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;~~
  - (c) any other person or body that exercises functions of a public nature, under legislation in any country or territory outside the United Kingdom, that appear to the Panel to be similar to its own functions or those of the Financial Conduct Authority or the Prudential Regulation Authority or similar to the regulatory functions of the Bank of England.

...

**953 Failure to comply with rules about bid documentation**

...

- (9) In this section-

...

~~"offer document" means a document required to be published by rules giving effect to Article 6.2 of the Takeovers Directive made in accordance with paragraph 12(1) to (3) of Schedule 1C;~~

~~"offer document rules" means rules designated as rules that give effect to Article 6.3 of that Directive;~~

"offer document rules" means rules under section 943(1) designated as rules made in accordance with paragraph 12(4) of Schedule 1C;

~~"response document" means a document required to be published by rules giving effect to Article 9.5 of that Directive made in accordance with paragraph 18 of Schedule 1C;~~

~~"response document rules" means rules designated as rules that give effect to the first sentence of Article 9.5 of that Directive;~~

"response document rules" means rules under section 943(1) designated as rules made in accordance with paragraph 18(1) of Schedule 1C;

...

~~"takeover bid" has the same meaning as in that Directive meaning given by paragraph 20(1) of Schedule 1C;~~

## APPENDIX C

Shared jurisdiction companies<sup>34</sup>

## Part 1: Shared jurisdiction companies in relation to which the Panel is the “regulated market regulator”

	Company	EEA Member State of registered office
1.	AFI Development plc	Cyprus
2.	Avangardco Investments Public Limited	Cyprus
3.	B&M European Value Retail SA	Luxembourg
4.	BBGI SICAV SA	Luxembourg
5.	BCRE – Brack Capital Real Estate Investments NV	Netherlands
6.	Carador Income Fund plc	Ireland
7.	DCC plc	Ireland
8.	DP Eurasia NV	Netherlands
9.	Etalon Group plc	Cyprus
10.	Global Ports Investments plc	Cyprus
11.	Globaltrans Investment plc	Cyprus
12.	Grafton Group plc	Ireland
13.	Greencore Group plc	Ireland
14.	HMS Hydraulic Machines & Systems Group plc	Cyprus
15.	IG Seismic Services plc	Cyprus
16.	MD Medical Group Investments plc	Cyprus
17.	MHP SE	Cyprus
18.	O’Key Group SA	Luxembourg
19.	Plaza Centers NV	Netherlands
20.	RHI Magnesita NV	Netherlands

<sup>34</sup> The lists in Part 1 and Part 2 of this Appendix C have been prepared on the basis of publicly available information and it is possible that companies may have been included in or omitted from the lists in error.

21.	ROS AGRO plc	Cyprus
22.	TCS Group Holding plc	Cyprus
23.	Tharisa plc	Cyprus
24.	UDG Healthcare plc	Ireland
25.	X5 Retail Group NV	Netherlands

**Part 2: Shared jurisdiction companies in relation to which the Panel is the “registered office regulator”**

	<b>Company</b>	<b>Regulated market</b>	<b>EEA Member State of regulated market</b>
1.	Acacia Pharma Group plc	Euronext Brussels	Belgium
2.	Air Berlin plc	Xetra Regulated Market	Germany
3.	Awilco Drilling plc	Oslo Børs	Norway
4.	Dialog Semiconductor plc	Xetra Regulated Market	Germany
5.	Global Graphics plc	Euronext Brussels	Belgium
6.	Opportunity Investment Management plc	Euronext Brussels	Belgium
7.	Rak Petroleum plc	Oslo Børs	Norway
8.	Stallergenes Greer plc	Euronext Paris	France
9.	TechnipFMC plc	Euronext Paris	France
10.	TORM plc	Nasdaq Nordic Main Market	Denmark
11.	Zeal Network SE	Xetra Regulated Market	Germany

## APPENDIX D

### Proposed amendments to the Takeover Code

#### INTRODUCTION

##### 1 OVERVIEW

The Panel on Takeovers and Mergers (the "Panel") is an independent body, established in 1968, whose main functions are to issue and administer the City Code on Takeovers and Mergers (the "Code") and to supervise and regulate takeovers and other matters to which the Code applies in accordance with the rules set out in the Code. ~~It has been designated as the supervisory authority to carry out certain regulatory functions in relation to takeovers pursuant to the Directive on Takeover Bids (2004/25/EC) (the "Directive").~~ Its statutory functions are set out in and under Chapter 1 of Part 28 of the Companies Act 2006 ~~(as amended by The Companies Act 2006 (Amendment of Schedule 2) (No 2) Order 2009)~~ (the "Act"). Rules are set out in the Code ~~(including this Introduction, the General Principles, the Definitions, and the Rules (and the related Notes) and the Appendices))~~ (including in and the Rules of Procedure of the Hearings Committee at Appendix 9). These rules may be changed from time to time, and rules may also be set out in other documents as specified by the Panel. Statutory rules also apply to the Isle of Man, Jersey and Guernsey: see sections 14, 15 and 16 for more details.

...

##### 2 THE CODE

Save for sections 2(c) ~~and (d)~~ (which ~~each sets out a rule~~), this section gives an overview of the nature and purpose of the Code.

###### (a) Nature and purpose of the Code

...

The Code has been developed since 1968 to reflect the collective opinion of those professionally involved in the field of takeovers as to appropriate business standards and as to how fairness to offeree company shareholders and an orderly framework for takeovers can be achieved. ~~Following the implementation of the Directive by means of the Act, the~~ rules set out in the Code have a statutory basis in relation to the United Kingdom and comply with the relevant requirements of the ~~Act-Directive~~ Act-Directive. The rules set out in the Code also have a statutory basis in relation to the Isle of Man, Jersey and Guernsey: see sections 14, 15 and 16 respectively.

###### (b) General Principles and Rules

The Code is based upon a number of General Principles, which are essentially statements of standards of commercial behaviour. These General Principles are the same as the general principles set out in ~~Part 1 of Schedule 1C to the Act Article 3 of the Directive~~. They apply to takeovers and other matters to which the Code applies. They are expressed in broad general terms and the Code does not define the precise extent of, or the limitations on, their application. They are applied in accordance with their spirit in order to achieve their underlying purpose.

...

**(c) Derogations and Waivers**

The Panel may derogate or grant a waiver to a person from the application of a rule (provided, in the case of a transaction and rule subject to the requirements of the Directive, that the General Principles are respected) either:

- (i) in the circumstances set out in the rule; or
- (ii) in other circumstances where the Panel considers that the particular rule would operate unduly harshly or in an unnecessarily restrictive or burdensome or otherwise inappropriate manner (in which case a reasoned decision will be given).

**~~(d) Transitional provisions for offers which are not takeover bids under the Directive~~**

~~In relation to any offer which is not a “takeover bid” within the meaning given in the Directive, anything done (or not done) with respect to a rule set out in the Code as in force before 6 April 2007 shall have effect from 6 April 2007 as done (or not done) with respect to that rule of the Code as in force from 6 April 2007 and any reference in the Code to a rule of the Code shall be construed as including a reference to that rule as in force before 6 April 2007.~~

~~These transitional provisions do not apply to the Channel Islands or the Isle of Man.~~

**3 COMPANIES, TRANSACTIONS AND PERSONS SUBJECT TO THE CODE**

...

**(a) Companies**

- (i) UK, Channel Islands and Isle of Man registered and traded companies

The Code applies to all offers ~~(not falling within paragraph (iii) below)~~ for companies and ~~Societas Europaea~~ (and including, where appropriate, statutory and chartered companies and UK Societas) which have their registered offices\* in the United Kingdom, the Channel Islands or the Isle of Man if any of their securities are admitted to trading on a UK regulated market or a UK multilateral trading facility# ~~in the United Kingdom~~ or on any stock exchange in the Channel Islands or the Isle of Man.

- (ii) Other companies

The Code also applies to all offers ~~(not falling within paragraph (i) above or paragraph (iii) below)~~ for public and private companies† ~~and Societas Europaea~~ (and, where appropriate, statutory and chartered companies and UK Societas) which have their registered offices\* in the United Kingdom, the Channel Islands or the Isle of Man and which are considered by the Panel to have their place of central management and control in the United Kingdom, the Channel Islands or the Isle of Man, but in relation to private companies only when:

- (A) any of their securities have been admitted to trading on a UK regulated market or a UK multilateral trading facility# ~~in the United Kingdom~~ or on any stock exchange in the Channel Islands or the Isle of Man at any time during the 10 years prior to the relevant date; or

...

~~#In the case of a company whose securities are or have been admitted to trading on a UK multilateral trading facility in the United Kingdom, paragraph (i) will apply, and criterion (A) of paragraph (ii) will be satisfied, only if the company has approved trading, or requested admission to trading, of its securities on the relevant UK multilateral trading facility.~~

~~(iii) Shared jurisdiction — UK and other EEA registered and traded companies~~

~~The Code also applies (to the extent described below) to offers for the following companies:~~

~~(A) a company which has its registered office\* in the United Kingdom whose securities are admitted to trading on a regulated market in one or more member states of the European Economic Area but not on a regulated market in the United Kingdom;~~

~~(B) a company which has its registered office in another member state of the European Economic Area whose securities are admitted to trading on a regulated market in the United Kingdom and not on a regulated market in any other member state of the European Economic Area; and~~

~~(C) a company which has its registered office in another member state of the European Economic Area whose securities are admitted to trading on regulated markets in more than one member state of the European Economic Area including the United Kingdom, but not on a regulated market in the member state of the European Economic Area in which it has its registered office, if:~~

~~(I) the securities of the company were first admitted to trading only in the United Kingdom; or~~

~~(II) the securities of the company are simultaneously admitted to trading on more than one regulated market on or after 20 May 2006, if the company notifies the Panel and the relevant regulatory authorities on the first day of trading that it has chosen the Panel to regulate it; or~~

~~(III) the Panel is the supervisory authority pursuant to the second paragraph of Article 4(2)(c) of the Directive.~~

~~A company referred to in paragraphs (C)(II) or (III) must notify a Regulatory Information Service of the selection of the Panel to regulate it without delay.~~

~~The provisions of the Code which will apply to such offers shall be determined by the Panel on the basis set out in Article 4(2)(c) of the Directive. In summary, this means that:~~

- ~~\* in cases falling within paragraph (A) above, the Code will apply in respect of matters relating to the information to be provided to the employees of the offeree company and matters relating to company law (in particular the percentage of voting rights which confers control and any derogation from the obligation to launch an offer, as well as the conditions under which the board of the offeree company may undertake any action which might result in the frustration of an offer) (“employee information and company law matters”); in relation to matters relating to the consideration offered (in particular the price) and matters relating to the offer procedure (in particular the information on the offeror’s decision to make an offer, the contents of the offer document and the disclosure of the offer) (“consideration and procedural matters”), the rules of the supervisory authority of the member state determined in accordance with Article 4(2)(b) and (c) of the Directive as the relevant supervisory authority will apply; and~~

- ~~in cases falling within paragraphs (B) or (C) above, the Code will apply in respect of consideration and procedural matters; in relation to employee information and company law matters, the rules of the supervisory authority in the member state where the offeree company has its registered office will apply.~~

~~(iviii)~~ Open-ended investment companies

The Code does not apply to offers for open-ended investment companies ~~as defined in Article 4(2) of the Directive.~~

## **(b) Transactions**

~~In cases falling within paragraphs (a)(i) or (ii) above,~~ The Code is concerned with regulating takeover bids and merger transactions of the relevant companies, however effected, including by means of statutory merger or scheme of arrangement (as defined in the Definitions Section). The Code is also concerned with regulating other transactions (including offers by a parent company for shares in its subsidiary, dual holding company transactions, new share issues, share capital reorganisations and offers to minority shareholders) which have as their objective or potential effect (directly or indirectly) obtaining or consolidating control of the relevant companies, as well as partial offers (including tender offers pursuant to Appendix 5) to shareholders for securities in the relevant companies. The Code also applies to unitisation proposals which are in competition with another transaction to which the Code applies.

~~In cases falling within paragraph (a)(iii) above, "offers" means only any public offer (other than by the company itself) made to the holders of the company's securities to acquire those securities (whether mandatory or voluntary) which follows or has as its objective the acquisition of control of the company concerned.~~

...

## **(d) Dual jurisdiction**

Takeovers and other matters to which the Code applies may from time to time be subject to the dual jurisdiction of the Panel and an overseas takeover regulator, ~~including offers for these companies within paragraph (a)(iii) above.~~ In such cases, early consultation with the Panel is advised so that guidance can be given on how any conflicts between the relevant rules may be resolved ~~and, where relevant, which provisions of the Code apply pursuant to Article 4(2)(c) of the Directive.~~

...

## **12 CO-OPERATION AND INFORMATION SHARING**

This section summarises the relevant provisions of the Act ~~and sets out the rules as to the basis on which the Panel will effect service of documents under Article 4(4) of the Directive~~ and the professional secrecy obligations applying in relation to information held by the Panel in connection with the exercise of its functions which does not fall within section 948 of the Act.

Under section 950 of the Act, the Panel must, to the extent it has power to do so, take such steps as it considers appropriate to co-operate with:

- (a) the FCA, the Prudential Regulation Authority and the Bank of England; and

- ~~(b) other supervisory authorities designated for the purposes of the Directive; and~~
- ~~(eb) regulators outside the United Kingdom having functions similar to the Panel, the FCA or the Prudential Regulation Authority, or similar to the regulatory functions of the Bank of England,~~

including by the sharing of information which the Panel is permitted to disclose (see below). It may also exercise its powers to require documents and information (see section 9(b) above) for this purpose.

~~Where any supervisory authority designated for the purposes of the Directive by another member state or any authority responsible for the supervision of capital markets in another member state requests the Panel to serve any legal document in pursuance of its obligation of co-operation under Article 4(4) of the Directive, the Panel shall serve that document by first class post to the address specified for service in the request, and shall inform the requesting authority accordingly. No other method of service will be adopted by the Panel, even where the request specifies another method of service. In cases where:~~

- ~~(a) no address for service is specified in the request; or~~
- ~~(b) the request specifies an address for service outside of the United Kingdom; or~~
- ~~(c) service of the document is validly refused by the party upon whom it is to be served; or~~
- ~~(d) the Panel has been unable to serve the document for any other reason,~~

~~the Panel shall return the document unserved to the requesting authority, along with a statement of the reasons for non-service.~~

Under section 948 of the Act, information received by the Panel in connection with the exercise of its statutory functions may not be disclosed without the consent of the individual (where it concerns a person's private affairs) or business to which it relates except as permitted by the Act. Schedule 2 of the Act ~~(as amended by The Companies Act 2006 (Amendment of Schedule 2) (No 2) Order 2009)~~ includes gateways to allow the Panel to pass information it receives to United Kingdom and overseas regulatory authorities and other persons in accordance with the conditions laid down in that Schedule. The circumstances in which this may occur include, but are not limited to, the circumstances falling within paragraph 11(b)(iv) above.

## GENERAL PRINCIPLES

1. **(1) All holders of the securities of an offeree company of the same class must be afforded equivalent treatment;** ~~moreover,~~
  - (2) if a person acquires control of a company, the other holders of securities must be protected.**
2. **(1) The holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the takeover bid;**

(2) ~~w~~Where it advises the holders of securities, the board of directors of the offeree company must give its views on the effects of implementation of the takeover bid on:

(a) ~~employment;~~

(b) ~~conditions of employment;~~ and

(c) ~~the locations of the company's places of business.~~

3. The board of directors of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the takeover bid.

4. False markets must not be created in the securities of:

(a) ~~the offeree company;~~

(b) ~~of if the offeror is a company, that company;~~ or

(c) ~~of any other company concerned by the takeover bid~~

in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted.

5. An offeror must announce a takeover bid only after:

(a) ~~ensuring that he/she the offeror can fulfil in full any cash consideration, if such is offered;~~ and

(b) ~~after~~-taking all reasonable measures to secure the implementation of any other type of consideration.

6. An offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by a takeover bid for its securities.”.

## DEFINITIONS

### ~~Multilateral trading facility~~

~~Multilateral trading facility has the same meaning as in Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments (see Article 4.1(22)).~~

...

### ~~Regulated market~~

~~Regulated market has the same meaning as in Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments (see Article 4.1(21)).~~

...

### **Shares or securities**

(1) Except as set out below or as the context otherwise requires, references to shares, including when used in other expressions such as shareholders (but excluding equity share capital), include securities, and vice versa.

~~(2) In paragraph 3(a)(iii) and in the second paragraph of section 3(b) of the Introduction, the securities referred to are only transferable securities carrying voting rights.~~

(3) In paragraphs 3(a)(i) and (ii) and in the first paragraph of section 3(b) of the Introduction, the shares/securities referred to are only those shares/securities comprised in the company's equity share capital (whether voting or non-voting) and other transferable securities carrying voting rights.

...

### **UK multilateral trading facility**

UK multilateral trading facility has the meaning given in paragraph (14A) of Article 2(1) of Regulation (EU) No 600/2014 on markets in financial instruments (as amended by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018).

### **UK regulated market**

UK regulated market has the meaning given in paragraph (13A) of Article 2(1) of Regulation (EU) No 600/2014 on markets in financial instruments (as amended by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018).

## **Rule 2.11**

### **2.11 DISTRIBUTION OF ANNOUNCEMENTS TO SHAREHOLDERS, EMPLOYEE REPRESENTATIVES (OR EMPLOYEES) AND PENSION SCHEME TRUSTEES**

...

#### ***NOTES ON RULE 2.11***

...

#### ***2. Shareholders, persons with information rights and employee representatives (or employees) outside the UK, the Channel Islands and the Isle of Man-EEA***

*See the Note on Rule 30.4.*

## **Rule 6**

### **RULE 6. ACQUISITIONS RESULTING IN AN OBLIGATION TO OFFER A MINIMUM LEVEL OF CONSIDERATION**

...

**NOTES ON RULE 6**

...

**7. Unlisted securities**

*An offer where the consideration consists of securities for which immediate admission to trading on a UK regulated market ~~in the United Kingdom~~ is not to be sought will not normally be regarded as satisfying any obligation incurred under this Rule. In such cases the Panel should be consulted.*

**Rule 9.1****9.1 WHEN A MANDATORY OFFER IS REQUIRED AND WHO IS PRIMARILY RESPONSIBLE FOR MAKING IT**

...

**NOTES ON RULE 9.1**

...

**19. Bank recovery and resolution**

*In the case of a company to which ~~the Directive~~ Schedule 1C to the Act applies, Rule 9.1 does not apply in relation to any change in interests in shares or other transaction which is effected by the use of resolution tools, powers and mechanisms (within the meaning given in article 216 of the Bank Recovery and Resolution (No. 2) Order 2014).*

**Rule 12.1****12.1 REQUIREMENT FOR APPROPRIATE TERM IN OFFER**

...

**(b) Where an offer would give rise to a concentration with an EU dimension within the scope of Council Regulation 139/2004/EC, it must be a term of the offer that if Phase 2 European Commission proceedings are initiated, ~~or there is a Phase 2 CMA reference following a referral by the European Commission under Article 9(1) to a competent authority in the United Kingdom:~~**

**(i) in the case of a contractual offer, the offer will lapse if this occurs before the first closing date or the date when the offer becomes or is declared unconditional as to acceptances, whichever is the later; or**

**(ii) in the case of an offer being implemented by way of a scheme of arrangement, the offer will lapse and the scheme will not become effective if this occurs before the shareholder meetings (as defined in Appendix 7).**

(c) Except in the case of an offer under Rule 9, the offeror may, in addition, make the offer conditional on a decision being made that there will be no Phase 2 CMA reference, or initiation of Phase 2 European Commission proceedings or referral by the European Commission under Article 9(1) of the Council Regulation 139/2004/EC. In such a case, the condition may state that the decision must be on terms satisfactory to the offeror.

#### Rule 20.1

##### 20.1 EQUALITY OF INFORMATION TO SHAREHOLDERS AND PERSONS WITH INFORMATION RIGHTS

...

##### 5. *Shareholders and persons with information rights outside the UK, the Channel Islands or the Isle of Man-EEA*

*See the Note on Rule 30.4.*

#### Rule 24.3

##### 24.3 FINANCIAL AND OTHER INFORMATION ON THE OFFEROR, THE OFFEREE COMPANY AND THE OFFER

Except with the consent of the Panel:

...

(d) the offer document (including, where relevant, any revised offer document) must include:

...

(xiv) the compensation (if any) offered for the ~~removal of rights pursuant to Article 11 of the Directive~~ rights which might be removed as a result of any opting-in resolution under Chapter 2 of Part 28 of the Act together with particulars of the way in which the compensation is to be paid and the method employed in determining it;

#### Rule 26

##### RULE 26. DOCUMENTS TO BE PUBLISHED ON A WEBSITE

...

##### **NOTES ON RULE 26**

...

**4. Shareholders, persons with information rights and other persons outside the UK, the Channel Islands and the Isle of Man-EEA**

*Offer-related documents, announcements and information published on a website should be capable of being accessed by shareholders, persons with information rights and other relevant persons in all jurisdictions unless there is a sufficient objective justification for restricting access from certain ~~non-EEA~~-jurisdictions outside the United Kingdom, the Channel Islands and the Isle of Man on the basis described in the Note on Rule 30.4.*

**Rule 30**

**30.4 MAKING DOCUMENTS, ANNOUNCEMENTS AND INFORMATION AVAILABLE TO SHAREHOLDERS, PERSONS WITH INFORMATION RIGHTS AND EMPLOYEE REPRESENTATIVES (OR EMPLOYEES)**

If a document, an announcement or any information is required to be sent, published or made available to:

- (a) shareholders in the offeree company;
- (b) persons with information rights; or
- (c) employee representatives (or employees) of the offeror or the offeree company,

it must be sent, published or made available (as the case may be) to all such persons, including those who are located outside the United Kingdom, the Channel Islands and the Isle of Man-EEA, unless there is sufficient objective justification for not doing so.

**NOTE ON RULE 30.4**

***Shareholders, persons with information rights and employee representatives (or employees) outside the UK, the Channel Islands and the Isle of Man-EEA***

*Where local laws or regulations of a particular ~~non-EEA~~-jurisdiction outside the United Kingdom, the Channel Islands and the Isle of Man may result in a significant risk of civil, regulatory or, particularly, criminal exposure for the offeror or the offeree company if the information or documentation is sent, published or made available to shareholders in that jurisdiction without any amendment, and unless ~~they~~it can avoid such exposure by making minor amendments to the information being provided or documents being sent, published or made available either:*

- (a) *the offeror or the offeree company need not provide such information or send, publish or make such information or documents available to registered shareholders of the offeree company or persons with information rights who are located in that jurisdiction if less than 3% of the shares of the offeree company are held by registered shareholders located there at the date on which the information is to be provided or the information or documents are to be sent, published or made available (and there is no need to consult the Panel in these circumstances); or*
- (b) *in all other cases, the Panel may grant a dispensation where it would be proportionate in the circumstances to do so having regard to the cost involved, any*

*resulting delay to the transaction timetable, the number of registered shareholders in the relevant jurisdiction, the number of shares involved and any other factors invoked by the offeror or the offeree company.*

*Similar dispensations will apply in respect of information or documents which are sent, published, provided or required to be made available to employee representatives (or employees) of the offeror or the offeree company.*

*The Panel will not normally grant any dispensation in relation to shareholders, persons with information rights, or employee representatives (or employees) of the offeree company who are located within the United Kingdom, the Channel Islands or the Isle of Man-EEA.*

## Appendix 4

### APPENDIX 4

#### RECEIVING AGENTS' CODE OF PRACTICE

...

#### 2 QUALIFICATIONS FOR ACTING AS A RECEIVING AGENT

A receiving agent to an offer must either:

(a) be a member of the Registrars Group of the Institute of Chartered Secretaries and Administrators and:

(i) ...

(2) be responsible for the share registers of not less than 25 public companies which are admitted to trading on a UK regulated market or a UK multilateral trading facility; and

## Appendix 5

### APPENDIX 5

#### TENDER OFFERS

#### 1 PANEL'S CONSENT REQUIRED

...

Where a tender offer to which this Appendix applies is made on a UK regulated market or a UK multilateral trading facility, this Appendix takes precedence over any requirements of the relevant market or facility for the conduct of tender offers. However, the resulting transactions will be subject to the relevant trade and transaction reporting rules and requests for delivery and settlement.

...

## 2 PROCEDURE AND CLEARANCE

(a) A person publishing a tender offer for the shares of a company which are admitted to trading on a UK regulated market or a UK multilateral trading facility must do so by paid advertisement in two national newspapers and must notify the company concerned of the information specified in Section 3 at least 7 days before the day on which the tender offer closes. The offeror may also send copies of the advertisement to shareholders of the company and persons with information rights.

...

(f) In every case the UKLA, the relevant UK regulated market or UK multilateral trading facility and the Panel must be sent a copy of the final text of the advertisements or circulars in hard copy form and electronic form at the same time as they are sent to the newspapers or are published.

### Appendix 6

#### APPENDIX 6

#### BID DOCUMENTATION RULES FOR THE PURPOSES OF SECTION 953 OF THE COMPANIES ACT 2006

For the purposes of ~~Section 953 of the Companies Act 2006~~, “offer document rules” and “response document rules” are those ~~giving effect~~ made in accordance with, respectively, to Article 6(3) and the first sentence of Article 9(5) of the Directive paragraph 12(4) and paragraph 18(1) of Schedule 1C to the Act (see section 10(e) of the Introduction). The relevant parts of Rules 24 and 25 are set out below. Rule 27 is also relevant to the extent set out in section 10(e) of the Introduction.

#### “Offer document rules”

<u>ArticleParagraph</u>	Those parts of the Rule set out below which give effect to the <u>paragraph Article</u>
<del>Article 6(3)Paragraph 12(4)(a)</del>	Rule 24.3(d)(v)
<del>Article 6(3)Paragraph 12(4)(b)</del>	Rule 24.3(d)(ii)
<del>Article 6(3)Paragraph 12(4)(c)</del>	Rule 24.3(d)(iv)
<del>Article 6(3)Paragraph 12(4)(d)</del>	Rule 24.3(d)(v) and Note 4 on Rule 24.3
<del>Article 6(3)Paragraph 12(4)(e)</del>	Rule 24.3(d)(xiv)
<del>Article 6(3)Paragraph 12(4)(f)</del>	Rule 24.3(d)(iv)
<del>Article 6(3)Paragraph 12(4)(g)</del>	Rule 24.4(a)(i), (ii)

<del>Article 6(3) Paragraph 12(4)(h)</del>	<b>Rule 24.3(d)(vi)</b>
<del>Article 6(3)(i) Paragraphs 12(4)(i) to (l)</del>	<b>Rule 24.2</b>
<del>Article 6(3)(j) Paragraph 12(4)(m)</del>	<b>Rule 24.7 (first phrase)</b>
<del>Article 6(3)(k) Paragraph 12(4)(n)</del>	<b>Rule 24.3(d)(xi)</b>
<del>Article 6(3)(l) Paragraph 12(4)(o)</del>	<b>Rule 24.3(f)</b>
<del>Article 6(3)(m) Paragraph 12(4)(p)</del>	<b>Rule 24.3(d)(iii) and Note 3 on Rule 24.3</b>
<del>Article 6(3)(n) Paragraph 12(4)(q)</del>	<b>Rule 24.3(d)(xiii)</b>

***“Response document rules”***

<del>Article 9(5), first sentence Paragraph 18(1)</del>	<b>Rule 25.1 and Rule 25.2(a)</b>
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**APPENDIX E****List of 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?
- 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?
- Q4** Do you have any comments on the amendments to the General Principles of the Code proposed in Section 5 of the PCP?
- 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)?
- 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?