



THE TAKEOVER PANEL: PUBLIC CONSULTATION PAPER BY THE CODE COMMITTEE OF THE PANEL

ASSET VALUATIONS

RICS RESPONSE

Introduction

The RICS welcomes the opportunity to respond to the Takeover Panel's Consultation Paper PCP 2018/1 of 17 October 2018 and sets out its observations below, relating them to the specific questions posed. It would be content to expand on any of these points if the Panel would find this helpful.

About RICS

RICS is the global leading organisation for professionals in real estate, land, construction and related environmental issues as well as working in the personal property and business assets sectors.

Over 120,000 RICS members, who are Chartered Surveyors, exist globally and operate out of 146 countries, supported by an extensive network of regional offices (detailed on our website) located in every continent. RICS Headquarters is based in London and our international work is supported by a network of regional offices and national associations.

RICS members play a vital role throughout the entire asset life cycle – from initial inspection and measurement, development through to investment in, and the use of physical structures and other assets, as well as financial and business interests. In the valuation field our members' expertise covers a very wide range of disciplines, including business valuation. We also provide impartial advice to governments, policymakers and non-Government organisations.

RICS is an independent professional body, which was established in 1868 and has a UK Royal Charter. It is committed to setting and upholding the highest standards of excellence and integrity, providing impartial and authoritative advice on key land and asset issues affecting businesses and society.

RICS is a regulator of both its individual members and firms enabling it to maintain the highest standards and providing the basis for unparalleled client confidence in the sector. This regulation includes a specific focus on valuation via Valuer Registration.

As well as technical standards there are also rules of conduct for members and rules for the conduct of business for firms. These rules are coupled with ethical standards for all members.

RICS and Valuation Standards

A significant proportion of our members are involved in valuation practice on all manner of assets. The first RICS Valuation Standards publication was produced in 1976 and the current standards are the "RICS Valuation – Professional Standards" effective from 1st January

2014. The standards are commonly known as “the Red Book” and contain mandatory rules and best practice guidance for valuations of real estate and other assets.

RICS adopts the International Valuation Standards (IVS) 2013. The adoption of IVS in the Red book provides an implementation and practice framework for the application of IVS globally, ensuring that RICS members follow consistent methodologies throughout the world.

The Red Book is mandatory for all RICS members and regulated firms worldwide when carrying out Red Book specific valuations. It is also widely referred to by non-RICS valuers.

The global section of the Red Book comprises a broad ethical framework which can be applied to valuations of any asset type in any jurisdiction, in harmony with national legislation. They comprise a framework for the following:

- VPS1 – Terms of engagement (scope of work)
- VPS2 – Inspections, investigations and records
- VPS3 – Valuation reports;
- VPS4 – Bases of value, assumptions and special assumptions
- VPS 5- Valuation approaches and methods.

More specifically the standards relating to compliance with standards and practice statements where a written valuation is provided and ethics, competency, objectivity and disclosures are set out in Professional Standards PS1 and PS2.

The global standards are accompanied by detailed national standards.

For more information please visit <http://www.ricsvaluation.org/>

From an RICS perspective, the key requirement here is to build and maintain confidence and public trust in the valuation process. It is essential that the process provides assurance to all who may rely on a valuation forming part of an offer that the valuation has been undertaken to clearly defined professional standards which incorporate stringent requirements concerning transparency, objectivity and freedom from bias. RICS is therefore supportive of the Takeover Panel's objectives in developing these proposals, and focusses its response mainly on various aspects of practical implementation.

Q1 Is a period of 12 months prior to the commencement of the offer period an appropriate “look back” period in order for Rule 29 to apply to a valuation under the proposed Rule 29.1(a)(ii)?

Q2 Do you have any comments on the application of Rule 29 to a valuation published in the circumstances described in the proposed Rule 29.1(a)(i), (ii) or (iii)?

These two questions are closely linked and a combined response to them is therefore appropriate, the key change in the proposed Rule 29 being the specification of timescales.

Regarding proposed Rule 29.1 (a)(i), an asset valuation published during the offer period will almost certainly be regarded as of significance and relevance to the merits (or demerits) of the offer, and so inclusion here appears proper. We have no issues to raise on it.

In the case of proposed Rule 29.1 (a)(ii) and (iii), we can again see no objection in principle. There may be some practical considerations in relation to the avoidance of (actual or perceived) conflicts of interest. We believe that these may be best addressed through the issue of some updated RICS guidance for our members, rather than through any amendment or refinement of the proposed Rule 29. We set out these considerations and their potential handling below.

Assuming he or she were acting in accordance with the valuation standards set out in the RICS Red Book, a valuer would need to have given permission for publication for the purpose for which the valuation was supplied at the time the valuation report was (first) issued. If that purpose was a “regulated purpose” (which includes, but is not restricted to, takeovers and mergers) then, in compliance with the RICS Red Book, the valuation report would also have included certain additional disclosures as described in the next paragraph below. Naturally, even when giving such permission, a valuer may not know that the valuation they were supplying at an earlier date would be used as part of a particular offer in connection with subsequent takeover proceedings – they are also unlikely to know, until a later date, the identity of the other party to proceedings. Whilst on that earlier occasion they would need to ensure (and as necessary declare) that there were no conflicts of interest involved in providing valuation advice to their client, it is quite possible that, by the time of the offer, the situation may have changed, for example if the valuer has also provided valuation advice to that other party before takeover proceedings arose ie at a point in time when there was no conflict or potential conflict of interest. If requested to confirm that a previous published valuation may be referred to in an offer and that an updated valuation would not be materially different, the valuer's independence could be called into question at the later date by the involvement with the other party. It might be said that this is no different from the situation that could arise under the existing Rule 29, but by giving greater definition to the “retrospectivity” of the Rule – and by extending it to “historical” valuations, albeit that such instances might in practice be rare –

it is desirable to be clear how compliance both with the proposed Rule 20 and with the relevant valuation standards would be achieved.

There is an express requirement in the valuation standards published by the RICS (which adopt the International Valuations Standards (IVS) but add specific objectivity-related assurances and disclosures to them) that when undertaking valuations for “regulated purposes”, the valuer must make additional disclosures in his or her valuation report – ie over and above those required in valuation reports for any other purpose – concerning the proportion of the valuer’s fees in the preceding 12 months derived from work for the client concerned; and the valuer is also debarred from acting where he or she has been involved in the introduction and acquisition of an asset by the client and in the provision of a “regulated purpose” valuation of the same asset within the ensuing 12 months, unless there has been an intervening valuation by another, unconnected valuer. Needless to say, these additional disclosures represent an important assurance, and protection, to third parties - above all to potential investors - concerning the valuer’s independence and objectivity.

If proposed Rule 29.1 (a)(ii) and (iii) are introduced, and we support the rationale for doing so, then it would appear necessary, or at the very least, highly desirable:

- At proposed Rule 29.2 (b) to add a second sentence along the lines of: “Confirmation or updating by the original valuation provider will only be possible where the criteria specified in Rule 29.3, and flowing from compliance with the relevant standards under Rule 29.4 (a)(v), at the time of confirmation or updating can be satisfied”.

It would also seem desirable to clarify that:

- if the valuation cannot be confirmed or updated by the original valuer, this must be made clear - and the Panel would not expect to exercise the discretion available to it under proposed Rule 29.2 (b). The Panel may wish to consider whether anything should be added to the proposed Ruler 29 to make this explicit, rather than implicit.
- compliance with Rule 29.2(b) may require additional disclosures under the relevant valuation standards which would need to be included in the valuer’s communication confirming the use of the earlier valuation report, or of an update, in connection with the takeover. This clarification could be covered by an amendment to the RICS valuation standards rather than by an addition to the proposed Rule 29.

Q3 Do you have any comments on the proposed wording “unless the Panel considers that the valuation is not material to offeree company shareholders in making a properly informed decision as to the merits or demerits of the offer”?

No, subject to the matters raised in answer to Q1 and Q2 above.

Q4 Do you have any other comments on the proposed new NB at the beginning of Rule 29, the proposed Rule 29.1(a) or the proposed new Note on Rule 29.1?

No. More specifically, we are content with the new Note on Rule 29.1 which clarifies that a valuation set out in a company’s financial statements (which may eg be prepared under IFRS using IFRS-defined fair value as the basis of value) only as a result of accounting practice and which is not otherwise referred to by the relevant party would be excluded.

Q5 Should the specific types of asset valuations to which Rule 29 applies be those referred to in the proposed Rule 29.1(b)?

It is desirable that broad categories of asset embraced within Rule 29 should be identified, rather than attempting to list specific types. But if anything, the ambit of proposed Rule 29.1(b) appears more restricted than before. This may quite properly reflect practical experience (as per paragraph 3.6 in the Consultation Paper) but the reason for the omission of any continuing reference to intangible assets is unclear.

Q6 Should the Panel have the ability to apply Rule 29 to a valuation of other assets or liabilities, as referred to in the proposed Rule 29.1(c)?

It is recognised that the Panel will wish to retain some discretion over the application of Rule 29. It is agreed that a reference to liabilities is properly to be included, as – although their incidence may be rarer - they may also be subject to a valuation.

Q7 Do you have any comments on the proposed Rules 29.1(b) and (c)?

Not beyond the above.

Q8 Do you have any comments on the proposed Rule 29.1(d) in relation to the publication of a net asset value or adjusted net asset value?

This would contribute to overall transparency, and so we support it.

Q9 Should the Code require that a valuation published during the offer period must be in the form of, or accompanied by, a valuation report?

In the interests of transparency, a valuation report which sets the valuation in its proper context and includes all appropriate valuation-related disclosures would seem essential.

Q10 Should the Code require that a valuation report in respect of a valuation falling within the proposed Rule 29.1(a)(ii) or (iii) should be included in the offer document or the offeree board circular (as appropriate) or, if earlier, in the first announcement or document published during the offer period by the offeree company or the securities exchange offeror (as the case may be) which refers to that valuation?

This would appear to be a reasonable requirement, particularly in relation to Rule 29.1 (a)(ii). However, see the answer to Q1 and Q2 above regarding some practical considerations around this.

Q11 Do you have any other comments on the proposed Rule 29.2, regarding the requirement for a valuation report, or on the proposed new Note on Rule 29.2, in relation to the circumstances where it is not possible to obtain a valuation report within the required timeframe?

See the response above to Q1 and Q2. The discretion allowed to the Panel in the Note on Rule 2.2 would no doubt be exercised sparingly, and great caution would be appropriate where the original valuation provider was precluded from offering the confirmation or update required.

Q12 Do you have any comments on the proposed Rule 29.3 in relation to the requirements applying to valuers?

As the range of assets (and liabilities) that are, or may be brought, within Rule 29 broadens, it is sensible to allow for the valuations to be undertaken by those best qualified to do so. It is the combination of the skills and expertise of the individual valuer and the (recognised) professional standards to which they work that will ensure effective compliance.

Q13 Do you have any comments on the proposed Rule 29.4 in relation to a valuation report?

No.

Q14 Do you have any comments on the proposed Rule 29.5 in relation to “no material difference” statements?

We welcome the Panel’s view that express confirmation from the valuer is essential (paragraph 8.5 of the Consultation Paper). A small practical observation is that any valuation report is likely to be at a date slightly before the “date of the document or announcement in which the valuation report is published” but in cases where the report has been directly commissioned and expressly produced for the purpose of the document or announcement, the form of the valuer’s confirmation could be very simple.

Q15 Do you have any comments on the proposed Rule 29.6 in relation to the requirement to give an estimate of the amount of the potential tax liability which would arise upon a sale of the assets?

No.

Q16 Do you have any comments on the proposed Rule 29.7 in relation to information in valuation reports which could constitute a profit forecast?

We would sound a cautionary note here, to which the Takeover Panel may wish to give consideration. The Panel will be aware that some properties are bought and sold on the basis of their trading potential – examples include fuel stations, care homes, hotels, public houses, restaurants, cinemas and various other forms of leisure properties. The valuation method most often used in such cases is known, at least colloquially, as the “profits method” and involves estimations of *fair maintainable turnover* and *fair maintainable operating profit* by a *reasonably efficient operator* (italicised words are terms expressly defined in the RICS valuation standards). This will not constitute a “profit forecast” for the enterprise making the offer as envisaged by Rule 29, but the Panel may feel that it would be useful if this distinction in the use of similar terminology was clarified – which the RICS would be content to do in its valuation standards and accompanying guidance.

Q17 Do you have any comments on the proposed Rule 29.8 in relation to the valuation by one party to an offer of another party’s assets?

No – though we would underline the importance of the word “sufficient” in relation to “information”.

Q18 Do you have any comments on the consequential amendments to the Code proposed in Section 9(d) of the PCP?

No – we are content that the valuer’s consent must be obtained in the form described.

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