

RS 2018/2 6 March 2019

THE TAKEOVER PANEL

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

**RESPONSE STATEMENT BY
THE CODE COMMITTEE**



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1. Introduction and summary

(a) Background

1.1 On 5 November 2018, the Code Committee of the Takeover Panel (the “**Code Committee**”) published a public consultation paper¹ (“**PCP 2018/2**” or the “**PCP**”) which proposed a number of amendments to the Takeover Code (the “**Code**”) in relation to the withdrawal of the United Kingdom (the “**UK**”) from the European Union (the “**EU**”), as summarised in Section 1(b) below.

1.2 The proposed amendments would principally be made as a result of:

- (a) Directive 2004/25/EC on Takeover Bids (the “**Takeovers Directive**”) ceasing to apply in the UK; and
- (b) the amendment of the Companies Act 2006 (the “**Act**”) by The Takeovers (Amendment) (EU Exit) Regulations 2019² (the “**Takeovers (EU Exit) Regulations**”). In particular, those Regulations will amend section 943(1) of the Act so as to require the Panel to make rules in accordance with a new Schedule 1C to the Act, which will replicate the provisions of the Takeovers Directive to which the Panel is currently required to give effect (other than Article 4.2 of the Directive).

(b) Summary of proposals

(i) Shared jurisdiction

1.3 Section 3 of the PCP proposed the deletion of section 3(a)(iii) of the Introduction to the Code, which describes the application of the Code to an offer for a “**shared jurisdiction company**”, i.e. a company which has its registered office in one Member State of the European Economic Area (the “**EEA**”) and its securities admitted to trading on a regulated market in another EEA Member State (but not also on a regulated market in the EEA Member State in which it has its registered office).

1.4 Following 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 a remaining EEA Member State (i.e. not in the UK) and whose securities are admitted to trading on a UK regulated market (but not on a regulated market in that EEA Member State); or

¹ <http://www.thetakeoverpanel.org.uk/wp-content/uploads/2018/11/BREXIT-PCP-5-November-2018.pdf>

² <http://www.legislation.gov.uk/uksi/2019/217/contents/made>

- (b) a company which has its registered office in the UK and whose securities are admitted to trading on a regulated market in a remaining EEA Member State (and not on a UK regulated market) and which does not satisfy the “**residency test**” set out in section 3(a)(ii) of the Introduction to the Code.

1.5 Following the deletion of section 3(a)(iii) of the Introduction, the Code would 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 a remaining EEA Member State (but not on a UK regulated market) if the company satisfies the residency test set out in section 3(a)(ii) of the Introduction.

(ii) *The Introduction to the Code*

1.6 Section 4 of the PCP proposed further amendments to the Introduction to the Code (in addition to the deletion of section 3(a)(iii)).

1.7 In addition, it was proposed to replace the definitions of “**regulated market**” and “**multilateral trading facility**” in the Definitions Section of the Code with new definitions of “**UK regulated market**” and “**UK multilateral trading facility**” and to amend the definition of “**shares or securities**”.

(iii) *The General Principles*

1.8 Section 5 of the PCP proposed minor amendments to the General Principles of the Code so that they would be the same as the general principles in Part 1 of the new Schedule 1C to the Act.

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

1.9 Section 6 of the PCP proposed:

- (a) that the references to “**Phase 2 European Commission proceedings**” should be retained in the Code following the UK’s withdrawal from the EU; and
- (b) various amendments to the Rules and Appendices of the Code. In particular, it was proposed that the requirement in Rule 30.4 that documents, announcements and information should always 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 or the Isle of Man.

(c) *Responses to the consultation*

1.10 The consultation period in relation to PCP 2018/2 ended on 17 December 2018. Responses were received from five respondents. The four respondents who submitted

comments on a non-confidential basis are listed in **Appendix A** and their responses have been published on the Panel's website at www.thetakeoverpanel.org.uk. The fifth respondent - a shared jurisdiction company which has its registered office in an EEA Member State other than the UK and whose securities are admitted to trading on a regulated market in the UK - submitted comments on a confidential basis. The Code Committee thanks the respondents for their comments.

- 1.11 Respondents were generally supportive of the proposals. The principal comments and suggestions made by respondents are summarised in Sections 3 to 6 of this Response Statement.

(d) The Code Committee's conclusions

- 1.12 Having considered the responses to the consultation, the Code Committee intends to adopt the amendments proposed in the PCP.

- 1.13 In addition, a minor amendment has been made to section 3(b) of the Introduction to the Code to make clear that the General Principles of the Code apply to all transactions to which the Code applies and not only to transactions which fall within the definition of a "takeover bid" in paragraph 20(1) of the new Schedule 1C to the Act.

(e) Code amendments

- 1.14 The amendments to the Code which the Code Committee intends to adopt are set out in **Appendix B**. For ease of reference, Appendix B also sets out amendments to sections 1, 2(a), 2(b) and 14 of the Introduction to the Code, as described in Section 4 below, which will be made by the Panel rather than by the Code Committee.

(f) Implementation

- 1.15 At present, it is not possible to determine with certainty the date on which the amendments to the Code set out in this Response Statement will take effect (the "implementation date").

- 1.16 As matters currently stand:

- (a) the UK will cease to be a Member State of the EU at 11.00pm on Friday, 29 March 2019; and
- (b) the EU and the UK have not entered into a withdrawal agreement which includes a transition period during which EU law would continue to be applicable to and in the UK (a "Withdrawal Agreement").

- 1.17 If the UK withdraws from the EU on 29 March in such a “no deal” scenario, then the amendments to the Code set out in this Response Statement will come into effect at 11.00pm on 29 March 2019.
- 1.18 It is possible, however, that the amendments to the Code set out in this Response Statement may come into effect on a date other than 29 March 2019. For example:
- (a) the date on which the UK ceases to be a Member State of the EU could be extended in accordance with Article 50(3) of the Treaty on European Union (the “TEU”); or
 - (b) the EU and the UK may enter into a Withdrawal Agreement. In that case, the Code Committee would expect the amendments to the Code to come into effect following the end of the transition period (subject to the provisions of any such Withdrawal Agreement).
- 1.19 Section 944(2) of the Act provides that, where the Code Committee makes rules of the Code, it must do so by means of an instrument in writing (an “Instrument”). The Code Committee’s usual practice when making or amending rules of the Code is simultaneously to publish a response statement and make the relevant Instrument in accordance with section 944(2). On this occasion, however, the Code Committee has decided to publish this Response Statement, which sets out the amendments to the Code that it intends to adopt, but not to make the relevant rule-making Instrument until there is greater certainty as to the arrangements for the UK’s withdrawal from the EU. As and when the Code Committee makes such an Instrument, it will publish a Statement to that effect and make the Instrument publicly available on the Panel’s website. The Code Committee would expect the Instrument to reflect the amendments to the Code set out in this Response Statement. However, consequential amendments may be required in order to take account of the circumstances at the relevant time.
- 1.20 Save in relation to an offer for a shared jurisdiction company, as to which see Section 1(g) below, the Code, as amended, will be applied from the implementation date to all companies and transactions to which it relates, including those on-going transactions which straddle that date, except where to do so would give the amendments retroactive effect.
- (g) Shared jurisdiction offers which straddle the implementation date**
- (i) Introduction*
- 1.21 Section 3 of the PCP addressed the question of whether, and if so how, the Code would apply to an offer for a shared jurisdiction company which was on-going on the date on

which section 3(a)(iii) of the Introduction to the Code is deleted. The Code Committee's final views are set out below.

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

1.22 As regards an offer for a shared jurisdiction company to which the Code applies at the outset of the offer but to which the Code will no longer apply upon the deletion of section 3(a)(iii) of the Introduction to the Code (see paragraph 1.4 above), the Panel's regulation of the offer will cease on the implementation date.

1.23 The Code Committee would expect the documentation in relation to an offer for such a company which could straddle the implementation date to make clear that the Panel's regulation of the offer would cease on the implementation date.

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

1.24 As regards an offer for a shared jurisdiction company to which the Code will apply (in full) upon the deletion of section 3(a)(iii) of the Introduction to the Code (see paragraph 1.5 above):

(a) the full requirements of the Code (and not only those relating to employee information and company law matters) will be applied to the company and to the transaction with effect from the implementation date, 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; and

(b) the requirements of the Code which relate to matters such as the disclosure of interests and dealings in securities under Rule 8 will be applied in relation to the on-going offer with effect from the implementation date.

(h) Consultation

1.25 Where parties have any doubt as to the consequences of the amendments to the Code set out in this Response Statement, in particular the impact on any transaction which is in existence or contemplation, they should consult the Panel prior to the implementation date to obtain a ruling or guidance.

2. Legislative framework

(a) Introduction

2.1 Section 2 of the PCP described the legislative framework within which the Code currently operates and the changes to be made to that framework as a result of the UK's withdrawal from the EU.

2.2 Section 2 of this Response Statement provides an update as to the current position. However, at the time of writing, there continue to be various uncertainties as to the timing, process and consequences of the UK's withdrawal from the EU which may be resolved only after the publication of this Response Statement.

(b) The Takeovers Directive, the Act and the Takeovers (EU Exit) Regulations

2.3 The Takeovers Directive will cease to apply in the UK either upon the UK's withdrawal from the EU or, if a Withdrawal Agreement is entered into, at the end of the transition period.

2.4 At that time, certain amendments will be made to Part 28 of the Act by the Takeovers (EU Exit) Regulations, which were made by the Secretary of State on 11 February 2019 (following the approval of both Houses of Parliament) in exercise of powers conferred by the European Union (Withdrawal) Act 2018 (the "EUWA"). The final version of the Takeovers (EU Exit) Regulations is the same as the draft which was set out in Appendix A to the PCP.

(c) Other UK legislative amendments

2.5 Certain of the amendments to the Code proposed in the PCP were dependent on statutory instruments other than the Takeovers (EU Exit) Regulations having been made under the EUWA. The status of each of those statutory instruments is summarised in the section of this Response Statement which addresses the relevant amendments to the Code.

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

(i) Introduction

2.6 Section 2 of the PCP explained that, even though the Isle of Man, Jersey and Guernsey are not Member States of the EU or the EEA, certain amendments will need to be made to the relevant legislation in those jurisdictions as a result of the UK's withdrawal from the EU.

(ii) *The Isle of Man*

2.7 The Panel's legislative basis in the Isle of Man is set out in section 14 of the Introduction to the Code. In summary, The Companies Act 2006 (Extension of Takeover Panel Provisions) (Isle of Man) Order 2008 (the "**2008 Isle of Man Order**") and The Companies Act 2006 (Extension of Takeover Panel Provisions) (Isle of Man) Order 2009 (the "**2009 Isle of Man Order**") extend Chapter 1 of Part 28 of the Act to the Isle of Man with certain modifications. The Code Committee understands that a draft of The Companies Act 2006 (Extension of Takeover Panel Provisions) (Isle of Man) Order 2019 (the "**2019 Isle of Man Order**") has been agreed which would revoke and replace the 2008 Isle of Man Order and the 2009 Isle of Man Order upon the Takeovers Directive ceasing to apply in the UK. If the 2019 Isle of Man Order receives Royal Assent, consequential amendments will be made to section 14 of the Introduction to the Code upon the 2019 Isle of Man Order coming into force, as described in Section 4 below.

(iii) *Jersey*

2.8 The Panel's legislative basis in Jersey is set out in section 15 of the Introduction to the Code. Upon the Takeovers Directive ceasing to apply in the UK, it is intended that the European Union (Financial Services - Miscellaneous Amendments) (Jersey) Regulations³ will make amendments to the Companies (Takeovers and Mergers Panel) (Jersey) Law 2009 (the "**Jersey Law**") as a result of the UK's withdrawal from the EU. It will not be necessary for section 15 of the Introduction to the Code to be amended as a result of the amendments to the Jersey Law.

(iv) *Guernsey*

2.9 The Panel's legislative basis in Guernsey is set out in section 16 of the Introduction to the Code. Upon the Takeovers Directive ceasing to apply in the UK, the Companies (Panel on Takeovers and Mergers) (Brexit) (Guernsey) Regulations, 2019⁴ will make amendments to the Companies (Guernsey) Law, 2008 (the "**Guernsey Law**") as a result of the UK's withdrawal from the EU. It will not be necessary for section 16 of the Introduction to the Code to be amended as a result of the amendments to the Guernsey Law.

³ <https://statesassembly.gov.je/assemblypropositions/2019/p.11-2019.pdf>

⁴ <http://www.guernseylegalresources.gg/article/170606/No-18---The-Companies-Panel-on-Takeovers-and-Mergers-Brexit-Guernsey-Regulations-2019>

3. Shared jurisdiction

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?

(a) *Summary of proposals*

3.1 Section 3(a)(iii) of the Introduction to the Code sets out the rules as to the application of the Code to an offer for a shared jurisdiction company, i.e.:

- (a) 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; or
- (b) a company which has its registered office in another EEA Member State (i.e. not in the UK) and whose securities are admitted to trading on a regulated market in the UK and not on a regulated market in any other EEA Member State.

3.2 In summary, section 3(a)(iii) of the Introduction to the Code provides that:

- (a) in relation to an offer for a company described in paragraph 3.1(a) above:
 - (i) the Code will apply in respect of “**employee information and company law matters**”; and
 - (ii) the rules of the supervisory authority of the EEA Member State where the regulated market on which the company’s securities are admitted to trading is located will apply in relation to “**consideration and procedural matters**”; and
- (b) in relation to an offer for a company described in paragraph 3.1(b) above:
 - (i) the Code will apply in respect of consideration and procedural matters; and
 - (ii) the rules of the supervisory authority of the EEA Member State where the company has its registered office will apply in relation to employee information and company law matters.

3.3 Section 3(a)(iii) of the Introduction to the Code gives effect to paragraphs (b) to (e) of Article 4.2 of the Takeovers Directive (as required by section 943(1) of the Act). However, the new section 943(1) of the Act (as substituted by the Takeovers (EU Exit)

Regulations) will not require the Panel to make rules in accordance with provisions equivalent to Article 4.2 of the Takeovers Directive.

3.4 Section 3 of the PCP proposed that section 3(a)(iii) of the Introduction to the Code should be deleted upon the Takeovers Directive ceasing to apply in the UK.

3.5 Following the deletion of section 3(a)(iii) of the Introduction, the application of the Code to an offer for a UK-registered company with securities admitted to trading on a regulated market in an EEA Member State (but not on a UK regulated market) would turn, in effect, on whether the company fell within section 3(a)(ii) of the Introduction to the Code. In summary:

(a) if the company satisfied the requirement in section 3(a)(ii) of the Introduction to the Code for the company to have its place of central management and control in the UK, the Channel Islands or the Isle of Man (the “**residency test**”), then all of the provisions of the Code (and not only those relating to employee information and company law matters) would apply to an offer for the company; and

(b) if the company did not satisfy the residency test, then the Code would not apply (at all) to an offer for the company.

3.6 Following the deletion of section 3(a)(iii) of the Introduction, the Code would not apply (at all) to an offer for a non-UK, EEA Member State-registered company with securities admitted to trading on a UK regulated market. This is because (save for companies falling within section 3(a)(iii) of the Introduction), the Code applies only to offers for companies which have their registered office in the UK, the Channel Islands or the Isle of Man.

(b) Respondents’ comments

3.7 Two of the four respondents who specifically addressed the question agreed that the shared jurisdiction rules in section 3(a)(iii) of the Introduction to the Code should be deleted as proposed.

3.8 The other two respondents, whilst not objecting to the proposal as such, considered that there should be “grandfathering” arrangements, under which the Code would apply (in full) to an offer for any of the EEA Member State-registered companies referred to in paragraph 3.1(b) above if the offer would otherwise fall into a “regulatory vacuum”.

3.9 One of those two respondents encouraged the Panel, in the event that such “grandfathering” arrangements were not introduced, to enter into “protocols” with the supervisory authorities in the relevant EEA Member States as an alternative means to avoid such an offer falling into a “regulatory vacuum”.

- 3.10 The same respondent considered that the companies to which section 3(a)(iii) of the Introduction to the Code currently applies should make clear to their shareholders how their status would be affected by the amendments to the Code proposed in the PCP and the steps which the companies intended to take as a consequence.

(c) *The Code Committee's response*

- 3.11 The Code Committee, having considered the issue carefully, continues to believe that, upon the Takeovers Directive ceasing to apply in the UK, the Code should not apply (at all) to a company that:

- (a) has its registered office in a (remaining) EEA Member State; or
- (b) has its registered office in the UK but which does not satisfy the residency test.

Accordingly, the Code Committee believes that section 3(a)(iii) of the Introduction to the Code should be deleted, as proposed in the PCP and, further, does not believe that any "grandfathering" arrangements should be introduced.

- 3.12 Prior to the implementation of the Takeovers Directive on 20 May 2006, the Code applied only to companies which were incorporated in the UK, the Channel Islands or the Isle of Man, and it is only as a result of the implementation of the Directive that the Panel is currently required to regulate (on the basis of the Directive's shared jurisdiction regime) an offer for an EEA Member State-registered company which has securities admitted to trading on a regulated market in the UK.

- 3.13 The key reasons why the Code Committee considers that the Panel should revert to the historical position of regulating only offers for companies which have their registered office in the UK, the Channel Islands or the Isle of Man, and why it should not regulate offers for overseas companies with securities admitted to trading on a UK regulated market, were set out in paragraph 3.32 of the PCP, as follows:

- (a) the Code is based on UK company law architecture;
- (b) it is undesirable to extend the application of the Code to companies registered in jurisdictions in which the Panel might be unable to enforce the rules of the Code, and rulings made pursuant to those rules, particularly where local authorities might have no duty to co-operate 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.
- 3.14 The Code Committee considers that these reasons would apply equally to any “grandfathering” of EEA Member State-registered companies which currently fall within the shared jurisdiction regime.
- 3.15 In addition, consistent with the conclusion set out in RS 2012/3⁵ (as referred to in the PCP), the Code Committee continues to believe that, following the deletion of section 3(a)(iii) of the Introduction to the Code, the residency test should apply to any company that has its registered office in the UK and whose securities are admitted to trading solely on an overseas market. The Code Committee does not consider that any “grandfathering” arrangements should be introduced for UK-registered companies which currently fall within the shared jurisdiction regime. The question of whether a UK-registered company satisfies the residency test will, in the first instance, be a matter for determination by the Panel Executive (the “**Executive**”). The Code Committee notes that it should be relatively easy for a UK-registered company to ensure that it satisfies the residency test, given that the Executive will normally consider the test to be satisfied if a majority of the company’s directors are resident in the UK, the Channel Islands or the Isle of Man.
- 3.16 As regards the suggestion that the Panel should enter into “protocols” with the supervisory authorities in the relevant EEA Member States, the Code Committee has been informed that those supervisory authorities are not empowered to assume any jurisdiction over the companies in question or to enter into any such arrangements with the Panel.
- 3.17 A list of the 36 shared jurisdiction companies to which the Code applied at the time was set out in Appendix C to the PCP. Following the publication of the PCP, the Executive sought to make contact with each of those companies in order to make them aware of the proposed deletion of section 3(a)(iii) of the Introduction to the Code and the likely consequences for the application of the Code to the company. The Code Committee agrees that those companies should, if appropriate, make clear to their shareholders the consequences of the company no longer falling within the Takeovers Directive’s shared jurisdiction regime.
- 3.18 In the case of any doubt as to whether the rules of the supervisory authority in an EEA Member State would apply to an offer for a UK-registered company whose securities are

⁵ <http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/RS201203.pdf>

admitted to trading on a market in that Member State, the relevant supervisory authority should be consulted.

(d) Code amendments

- 3.19 Section 3(a)(iii) of the Introduction to the Code will be deleted as proposed in Section 3(k) of the PCP, as set out in Appendix B.

4. The Introduction to the Code

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?

(a) Summary of proposals

4.1 Section 4 of the PCP proposed various amendments to the Introduction to the Code (in addition to the deletion of section 3(a)(iii) proposed in Section 3) as a result of the UK's withdrawal from the EU.

4.2 In addition, it was proposed:

- (a) to amend the definition of “**shares or securities**” in the Definitions Section of the Code; and
- (b) to delete the definitions of “**regulated market**” and “**multilateral trading facility**” in the Definitions Section of the Code and to introduce new definitions of “**UK regulated market**” and “**UK multilateral trading facility**” (and to make consequential amendments to certain other provisions of the Code).

(b) Status of legislative amendments

(i) Societas Europaea

4.3 Paragraph 4.34 of the PCP proposed that the references to a “**Societas Europaea**” in sections 3(a)(i) and (ii) of the Introduction to the Code should be replaced with references to a “**UK Societas**”. This was on the basis that any UK-registered Societas Europaea will be converted automatically into a UK Societas, which will be a new UK corporate form, upon the coming into force of The European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2018⁶, which were in draft form at the time of the publication of the PCP. Those Regulations were made on 3 December 2018 and laid before Parliament on 5 December 2018.

(ii) Onshored MiFIR

4.4 Paragraph 4.45 of the PCP proposed that the new definitions of “**UK regulated market**” and “**UK multilateral trading facility**” should refer to the relevant provisions of Regulation (EU) No 600/2014 on markets in financial instruments, as amended by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018⁷, which were

⁶ <http://www.legislation.gov.uk/ukxi/2018/1298/made>

⁷ <http://www.legislation.gov.uk/ukxi/2018/1403/contents/made>

in draft form at the time of the publication of the PCP. Those Regulations were made on 19 December 2018.

(c) Respondents' comments

4.5 No substantive comments were received on the proposed amendments.

4.6 One respondent noted that the definition of a “**takeover bid**”, which will be introduced into paragraph 20(1) of Schedule 1C to the Act by the Takeovers (EU Exit) Regulations, was derived from the (narrow) definition of that term in the Takeovers Directive. As such, the term “takeover bid”, as used in Schedule 1C to the Act, would not cover all types of transaction to which the Code applies, such as a scheme of arrangement or an offer for a company whose securities are admitted to trading on a UK multilateral trading facility.

(d) The Code Committee's response

4.7 It is correct that the definition of a “takeover bid” in paragraph 20(1) of the new Schedule 1C to the Act does not cover all of the transactions which are subject to the Code, as described in section 3(b) of the Introduction to the Code. This is because Schedule 1C to the Act introduces the relevant requirements of the Takeovers Directive into UK law and the Directive applies to a sub-set of all of the transactions to which the Code applies. The Takeovers (EU Exit) Regulations have been made under provisions of the EUWA which limit the application of the new Schedule 1C to the Act to the transactions to which the Takeovers Directive currently applies.

4.8 Following the amendments referred to in Section 5 below, each of the General Principles of the Code will refer to a “takeover bid”, as a result of those General Principles being conformed with the general principles in paragraphs 1 to 6 of the new Schedule 1C to the Act. It is clear that the Code's General Principles apply to all transactions to which the Code applies and not only to those which fall within the definition of a “takeover bid” in paragraph 20(1) of the new Schedule 1C to the Act. However, in order to eliminate any doubt that this is the case, the Code Committee has decided to amend the fourth paragraph of section 3(b) of the Introduction to the Code, as follows:

“References in the Code to “takeovers”, “takeover bids”, “bids” and “offers” include all transactions subject to the Code as referred to in this section.”.

This paragraph will become the third paragraph of section 3(b) of the Introduction to the Code following the deletion of what is currently the second paragraph, which relates to offers for shared jurisdiction companies.

(e) Code amendments

(i) Amendments to be made by the Panel

4.9 As explained in Section 4 of the PCP, amendments to certain sections of the Introduction to the Code, as listed in section 4(b) of the Introduction, are made by the Panel rather than the Code Committee.

4.10 Section 4 of the PCP set out amendments to sections 1, 2(a) and 2(b) of the Introduction to the Code intended to be made by the Panel. The Panel has approved amendments to those sections of the Introduction to the Code, including certain non-material changes to the proposed amendments to section 1 of the Introduction.

4.11 In addition, as anticipated in paragraph 2.18 of the PCP, the Panel has approved a minor amendment to section 14 of the Introduction to the Code to reflect the intended replacement of the 2008 Isle of Man Order and the 2009 Isle of Man Order by the 2019 Isle of Man Order (see Section 2 above).

4.12 For ease of reference, the amendments to sections 1, 2(a), 2(b) and 14 of the Introduction of the Code which have been approved by the Panel are set out in Appendix B. The Panel has delegated to the Chairman of the Panel the power to make those amendments at the appropriate time.

(ii) Amendments to be made by the Code Committee

4.13 The Code Committee will:

- (a) amend section 2(c) and delete section 2(d) of the Introduction to the Code, as proposed in paragraph 4.17 of the PCP;
- (b) amend sections 3(a), 3(b) and 3(d) of the Introduction to the Code, as proposed in paragraph 4.44 of the PCP, and make the additional amendment to section 3(b) of the Introduction to the Code set out in paragraph 4.8 above;
- (c) delete the definitions of “**regulated market**” and “**multilateral trading facility**” from the Definitions Section of the Code and introduce new definitions of “**UK regulated market**” and “**UK multilateral trading facility**”, as proposed in paragraph 4.45 of the PCP;
- (d) make consequential amendments to Note 7 on Rule 6, Section 2 of Appendix 4, and Sections 1, 2(a) and 2(f) of Appendix 5, as proposed in paragraph 4.46 of the PCP;

- (e) amend the definition of “**shares and securities**” in the Definitions Section of the Code, as proposed in paragraph 4.47 of the PCP; and
- (f) amend section 12 of the Introduction to the Code, as proposed in paragraph 4.64 of the PCP.

4.14 The amendments summarised above are set out in full in Appendix B. Those amendments assume that the regulations and laws referred to above come into force in the expected form. If that is not the case, consequential amendments may need to be made to the relevant provisions of the Code.

(f) *Cross-Border Mergers*

4.15 As mentioned in paragraph 4.50 of the PCP, the Executive will withdraw Practice Statement No 18 in relation to Cross-Border Mergers upon The Companies (Cross-Border Mergers) Regulations) 2007 being revoked by The Companies, Limited Liability Partnerships and Partnerships (Amendment etc.) (EU Exit) Regulations 2018⁸. Those Regulations, which were in draft form at the time of the publication of the PCP, were made on 19 February 2019.

⁸ <http://www.legislation.gov.uk/uksi/2019/348/contents/made>

5. The General Principles

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

5.1 Section 5 of the PCP proposed minor amendments to the General Principles of the Code so as to conform them to the general principles in Part 1 of the new Schedule 1C to the Act.

(b) Respondents' comments

5.2 No substantive comments were received on the proposed amendments.

(c) Code amendments

5.3 The General Principles of the Code will be amended so that they will be the same as the general principles in Part 1 of Schedule 1C to the Act, as proposed in Section 5 of the PCP and as set out in Appendix B.

6. The Rules and Appendices of the Code

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?

(a) Introduction

6.1 Section 6 of the PCP proposed 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 In addition, Section 6 of the PCP proposed various amendments to the Rules and Appendices of the Code as a result of the UK's withdrawal from the EU.

(b) Phase 2 European Commission proceedings

(i) Summary of proposals

6.3 Various provisions of the Code, as described in paragraph 6.3 of the PCP, 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 (the “**EU Merger Regulation**”) in respect of an offer or possible offer.

6.4 Broadly:

(a) **Rule 12.1(b)** 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, Phase 2 European Commission proceedings are initiated;

(b) **Rule 12.1(c)** provides that an offeror (other than a mandatory offeror) may make its offer conditional on there being no Phase 2 European Commission proceedings;

(c) **Rules 13.3(a)** and **13.3(b)** provide that an offer may be subject to a pre-condition which relates to:

(i) a decision that there will be no initiation of Phase 2 European Commission proceedings; and/or

- (ii) if such proceedings are initiated, a decision by the European Commission to allow the offer to proceed on terms satisfactory to the offeror;
 - (d) **Rule 13.2** provides that neither a condition included pursuant to Rule 12.1(c) nor a pre-condition included pursuant to Rule 13.3(a) or 13.3(b) is subject to the provisions of **Rule 13.5(a)**, which provides that an offeror should not invoke any condition or pre-condition so as to cause the offer 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
 - (e) **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 an initiation of Phase 2 European Commission proceedings.
- 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. However, the Code was not amended as a result of any requirement of the EU Merger Regulation or of EU law.
- 6.6 The EU Merger Regulation will be revoked in the UK by The Competition (Amendment etc.) (EU Exit) Regulations 2019.⁹ Those Regulations, which were in draft form at the time of the publication of the PCP, were made on 22 January 2019.
- 6.7 Section 6(b) of the PCP proposed amendments to Rules 12.1(b) and 12.1(c) to reflect the fact that, following the revocation of the EU Merger Regulation in the UK, it will no longer be possible for the European Commission to refer a matter to the Competition and Markets Authority pursuant to Article 9.1 of the EU Merger Regulation.
- 6.8 In addition, it was proposed that the references in the Code to Phase 2 European Commission proceedings should be retained following the UK’s withdrawal from the EU for the following reasons:
- (a) the references are not included in the Code as a result of any requirement of EU law, it is not necessary to delete them to maintain the coherence of the Code following the UK’s withdrawal from the EU, and it would not be appropriate to do so in that context;
 - (b) it has been explained to the Code Committee that offerors consider the fact that Rule 13.2 exempts the application of the materiality test in Rule 13.5(a) from a

⁹ <http://www.legislation.gov.uk/uksi/2019/93/contents/made>

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) removing the references would materially alter the existing balance that the Code strikes between the competing interests of those involved in offers.

6.9 It was acknowledged that the conclusion to retain the references in the Code to Phase 2 European Commission proceedings was a pragmatic one which the Code Committee intended to keep under review.

(ii) *Respondents' comments*

6.10 No specific comments were received with regard to the proposed amendments to Rules 12.1(b) and 12.1(c).

6.11 Three respondents made specific comments on the proposal that the references in the Code to Phase 2 European Commission proceedings should be retained following the UK's withdrawal from the EU:

- (a) one respondent agreed with the proposal, and the reasons given, notwithstanding the apparent anomaly of the Code treating EU competition law proceedings differently from other non-UK competition law proceedings following the UK's withdrawal from the EU. However, this respondent considered that the treatment of Phase 2 European Commission proceedings should be examined in the context of a wider review of the treatment by the Code of conditions and pre-conditions to offers relating to anti-trust and other regulatory clearances;
- (b) one respondent stated that, whilst it could understand the proposal in the current context of the UK's withdrawal from the EU, it was not convinced by the reasons given. The respondent questioned the different treatment by the Code of UK/EU proceedings and third country proceedings. This respondent also considered that the issue should be revisited as part of a broader review of conditions to offers; and
- (c) one respondent, whilst it understood the proposed pragmatic approach, disagreed with the proposal on the basis that the UK would not be subject to the EU competition law framework following its withdrawal from the EU. The respondent considered that it would be illogical for the materiality test in Rule 13.5(a) to continue to be disapplied in relation to the invocation of an EU competition proceedings condition following withdrawal and that the EU merger regime should

have equivalent status under the Code to anti-trust regimes in the rest of the world.

(iii) *The Code Committee's response*

- 6.12 As indicated above, the references to Phase 2 European Commission proceedings were not introduced into the Code as a result of any requirement of EU law and will not be required to be removed as a result of the UK's withdrawal from the EU.
- 6.13 The primary purpose of the PCP was to propose amendments to the Code as a direct result of the UK's withdrawal from the EU and the Code Committee continues to believe that it would not be appropriate to remove the references to Phase 2 European Commission proceedings in that context. This is particularly the case given the protection currently afforded to offerors by the fact that Rule 13.2 disapplies the materiality test in Rule 13.5(a) from an EU competition condition, and the fact that removing the references to Phase 2 European Commission proceedings could materially alter the existing balance that the Code strikes between the competing interests of those involved in offers.
- 6.14 Accordingly, the references to Phase 2 European Commission proceedings will not be removed from the Code when the UK withdraws from the EU.
- 6.15 However, as stated in the PCP, the Code Committee will keep the Code's treatment of Phase 2 European Commission proceedings under review.

(iv) *Code amendments*

- 6.16 Rules 12.1(b) and 12.1(c) will be amended as proposed in Section 6(b) of the PCP, as set out in Appendix B.

(c) **Bank recovery and resolution**

(i) *Summary of proposals*

- 6.17 Broadly, Note 1 on Rule 9.1 disapplies the requirement for a person to make a mandatory offer where that requirement arises as a result of "*the use of resolution tools, powers and mechanisms*" by a relevant authority in relation to a company to which the Takeovers Directive applies. Note 1 on Rule 9.1 implements a requirement in Article 219(2) of The Bank Recovery and Resolution (No 2) Order 2014 (the "**BRRO**"), which in turn implements the final paragraph of Article 4.5 of the Takeovers Directive (as amended).
- 6.18 The reference to the Takeovers Directive in Article 219(2) of the BRRO will be replaced by a reference to the new Schedule 1C to the Act upon The Bank Recovery and Resolution

and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018¹⁰ coming into force. Those Regulations, which were in draft form at the time of the publication of the PCP, were made on 20 December 2018.

6.19 Section 6(c) of the PCP proposed that the reference to the Takeovers Directive in Note 19 on Rule 9.1 should be amended so as to refer instead to the new Schedule 1C to the Act.

(ii) Respondents' comments

6.20 No specific comments were received on the proposed amendment.

(iii) Code amendments

6.21 Note 19 on Rule 9.1 will be amended as proposed in Section 6(c) of the PCP, as set out in Appendix B.

(d) "Breakthrough"

(i) Summary of proposals

6.22 Section 6(d) of the PCP proposed that Rule 24.3(d)(xiv), which requires an offer document to include details of the compensation (if any) offered for the removal of rights pursuant to the "**breakthrough**" rule in Article 11 of the Takeovers Directive, should be amended so as to refer instead to Chapter 2 of Part 28 of the Act. This amendment would implement paragraph 12(4)(e) of the new Schedule 1C to the Act.

(ii) Respondents' comments

6.23 No specific comments were received on the proposed amendment.

(iii) Code amendments

6.24 Rule 24.3(d)(xiv) will be amended as proposed in Section 6(d) of the PCP, as set out in Appendix B.

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

(i) Summary of proposals

6.25 Broadly, Rule 30.4 requires that, if documents, announcements or information are required to be made available to offeree company shareholders or employee representatives, they must be made available to all such persons, including those who are

¹⁰ <http://www.legislation.gov.uk/uksi/2018/1394/contents/made>

located outside the EEA, unless there is sufficient objective justification for not doing so. 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 provides the Panel with a general power to grant a dispensation in cases which do not fall within those circumstances.

6.26 Section 6(e) of the PCP proposed that references in Rule 30.4 and the Note on Rule 30.4 to the EEA should be replaced with references to the UK, the Channel Islands and the Isle of Man. In addition, consequential amendments were proposed to Note 2 on Rule 2.11, Note 5 on Rule 20.1 and Note 4 on Rule 26.

(ii) *Respondents' comments*

6.27 No specific comments were received on the proposed amendments.

(iii) *Code amendments*

6.28 Rule 30.4 and the Note on Rule 30.4 will be amended, and consequential amendments will be made to Note 2 on Rule 2.11, Note 5 on Rule 20.1, and Note 4 on Rule 26, as proposed in Section 6(e) of the PCP, as set out in Appendix B.

(f) ***Bid documentation offence***

(i) *Summary of proposals*

6.29 As described in paragraph 6.27 of the PCP, section 953 of the Act contains the “**bid documentation offence**”. Appendix 6 of the Code sets out the provisions which have been designated by the Panel as “**offer document rules**” and “**response document rules**” in accordance with section 953. The offer document rules and the response document rules are designated by reference to the requirements of, respectively, Article 6.3 and the first sentence of Article 9.5 of the Takeovers Directive. Upon the Takeovers (EU Exit) Regulations coming into force, those requirements will be replaced by the requirements of paragraphs 12(4) and 18(1) of the new Schedule 1C to the Act.

6.30 Section 6(f) of the PCP proposed that the designation of the offer document rules and the response document rules in Appendix 6 should be amended by replacing the references to the relevant provisions of Articles 6.3 and 9.5 of the Takeovers Directive with references to the relevant provisions of paragraphs 12(4) and 18(1) of Schedule 1C to the Act.

(ii) *Respondents' comments*

6.31 No specific comments were received on the proposed amendments. However, one respondent raised various questions with regard to the purpose and application of the bid documentation offence.

(iii) *The Code Committee's response*

6.32 As the respondent acknowledged, questions with regard to the purpose and application of the bid documentation offence are matters for the Government. The Code Committee has not therefore sought to answer those questions.

(iv) *Code amendments*

6.33 Appendix 6 of the Code will be amended as proposed in Section 6(f) of the PCP, as set out in Appendix B.

APPENDIX A**Non-confidential respondents to PCP 2018/2**

1. Institute of Chartered Accountants in England and Wales
2. Joint Working Party of the Company Law Committees of the City of London Law Society and the Law Society of England and Wales
3. Pinsent Masons LLP
4. Quoted Companies Alliance

APPENDIX B

Amendments to the 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~~ The Panel’s 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~~ The rules of set out in the Code ~~(including include rules set out in this Introduction, the General Principles, the Definitions, and the Rules, (and the related Notes and Appendices)) and (including the Rules of Procedure of the Hearings Committee which are set out in 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~~ The rules set out in the Code also apply to have a statutory basis in relation to the Isle of Man, Jersey and Guernsey: see sections 14, 15 and 16 respectively 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, t~~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.~~

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 1(2) of the Directive.~~

(b) Transactions

~~In cases falling within paragraphs (a)(i) or (ii) above, t~~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 these securities (whether mandatory or voluntary) which follows or has as its objective the acquisition of control of the company concerned.~~

The Code applies to all the above transactions at whatever stage of their implementation, including possible transactions which have not yet been announced.

References in the Code to “takeovers”, “takeover bids”, “bids” and “offers” include all transactions subject to the Code as referred to in this section.

The Code does not apply to offers for non-voting, non-equity capital unless they are offers required by Rule 15.

...

(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.

...

14 ISLE OF MAN

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 2019-2008 ~~(as amended by The Companies Act 2006 (Extension of Takeover Provisions) (Isle of Man) Order 2009)~~. The rules set out in the Code have statutory effect in the Isle of Man by virtue of this Order ~~these Orders~~.

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.~~

(2) 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>
Article 6(3)Paragraph 12(4)(a)	Rule 24.3(d)(v)
Article 6(3)Paragraph 12(4)(b)	Rule 24.3(d)(ii)
Article 6(3)Paragraph 12(4)(c)	Rule 24.3(d)(iv)
Article 6(3)Paragraph 12(4)(d)	Rule 24.3(d)(v) and Note 4 on Rule 24.3
Article 6(3)Paragraph 12(4)(e)	Rule 24.3(d)(xiv)
Article 6(3)Paragraph 12(4)(f)	Rule 24.3(d)(iv)
Article 6(3)Paragraph 12(4)(g)	Rule 24.4(a)(i), (ii)