

Presumptions of the definition of “acting in concert”



Webinar: 29 June 2022

Introduction

- “Acting in concert” – importance of presumptions
- Presumption (1) currently applies to companies in the same “group”
- Key changes:
 - threshold raised from 20% to 30%
 - applies to voting interests as well as equity interests
 - long derivative/option positions count towards 30% threshold
 - applies to interests in a fund in the same way as to interests in shares in a company
- Implemented by two new presumptions
- Review of presumptions in general and their application



Overview

COMPANIES	
New presumption (1)	New presumption (2)
<p>Companies connected by:-</p> <p>(1) $\geq 30\%$ voting rights; <u>or</u></p> <p>(2) $> 50\%$ equity share capital (voting and non-voting)</p>	<p>(1) Companies connected by $\geq 30\%$ equity share capital (voting and non-voting); <u>and</u></p> <p>(2) Companies presumed to be AIC with companies in para (1) under new presumption (1)</p>
Rationale: “control”	Rationale: “shoulder to the wheel”
% interests do <u>not</u> dilute through a chain of ownership	% interests <u>do</u> dilute through a chain of ownership
FUNDS	
Interests in funds treated in same way as interests in a company’s equity share capital	



New presumption (1) – control – votes or equity

- “Control” at $\geq 30\%$ votes or $>50\%$ equity (see *Note on Definitions*)
- “Control” does not dilute “up/down the chain”
- Consistent with “connected” status/Note 16 on Rule 9.1

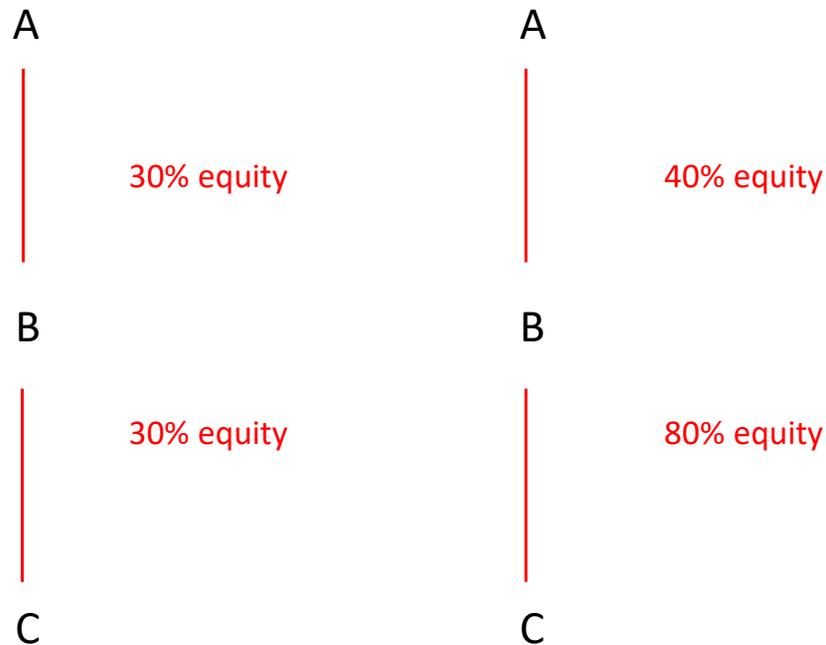


- In both cases, A, B and C are all presumed to be acting in concert with each other



First limb of new presumption (2) – equity only

- First limb of new presumption (2) applies at $\geq 30\%$ direct or indirect equity interest (whether voting or non-voting)
- In relation to new presumption (2), equity does dilute “up/down the chain”



(9% “see through” interest)

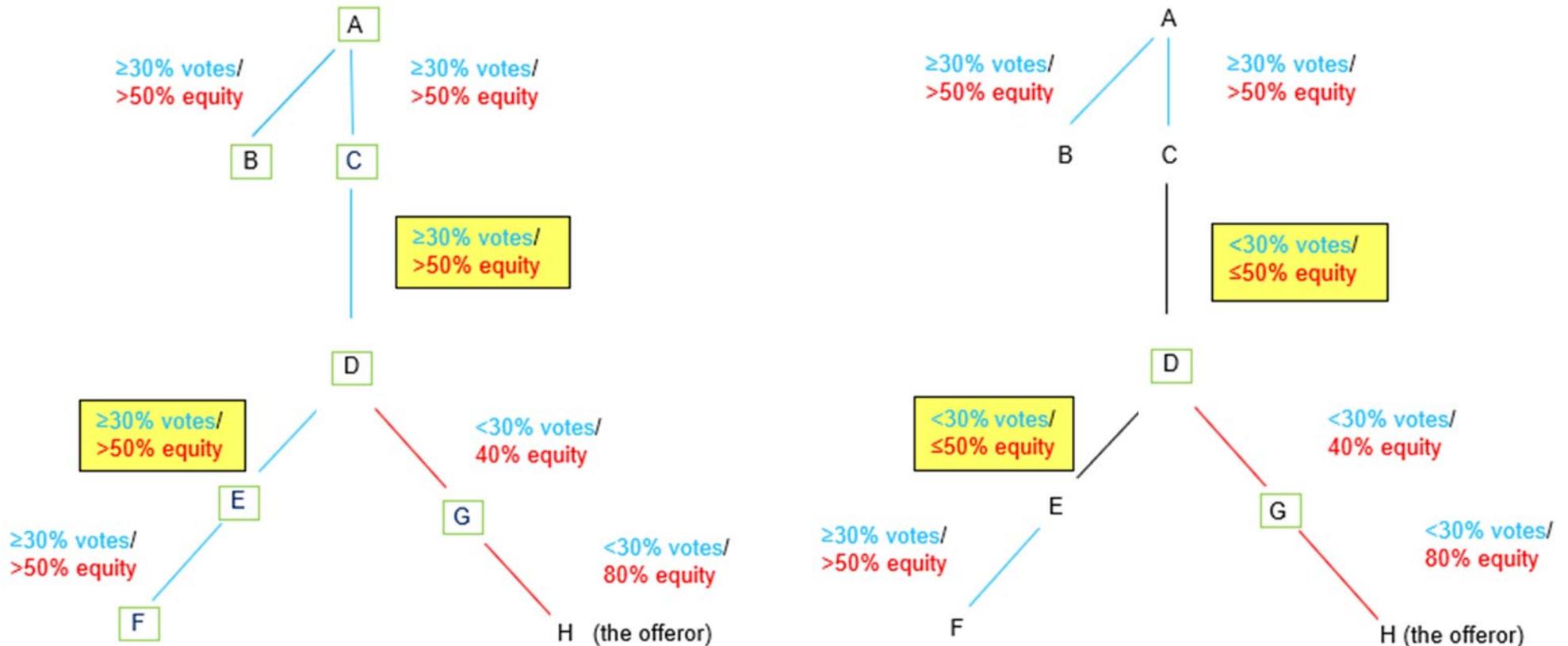
- A and B in concert
- B and C in concert
- But A and C not in concert

(32% “see through” interest)

- A and B in concert
- B and C in concert
- A, B and C all in concert



Second limb of new presumption (2)

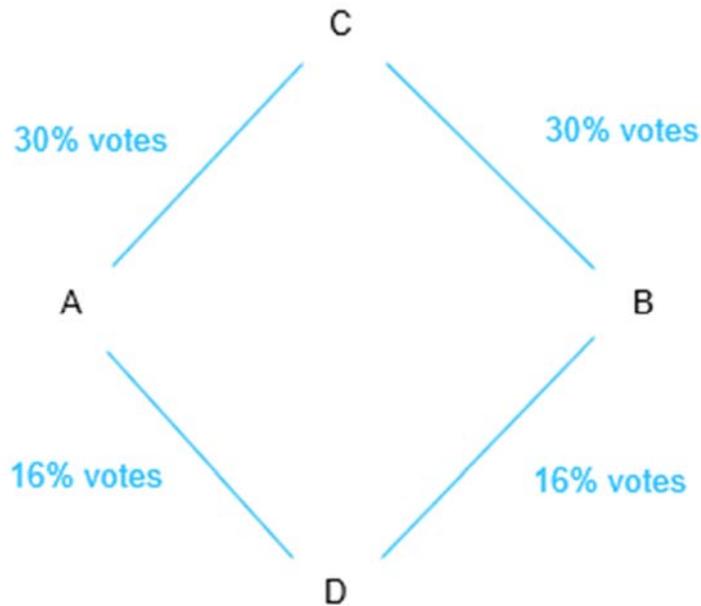


- Second limb of presumption (2) catches any company which controls, is controlled by or is under the same control as a company subject to first limb of presumption (2)
- D and G presumed to be acting in concert with H under first limb of presumption (2)
- A, B, C, E and F also presumed to be acting in concert with H (the offeror) under second limb
- Only D and G presumed to be acting in concert with H (the offeror)



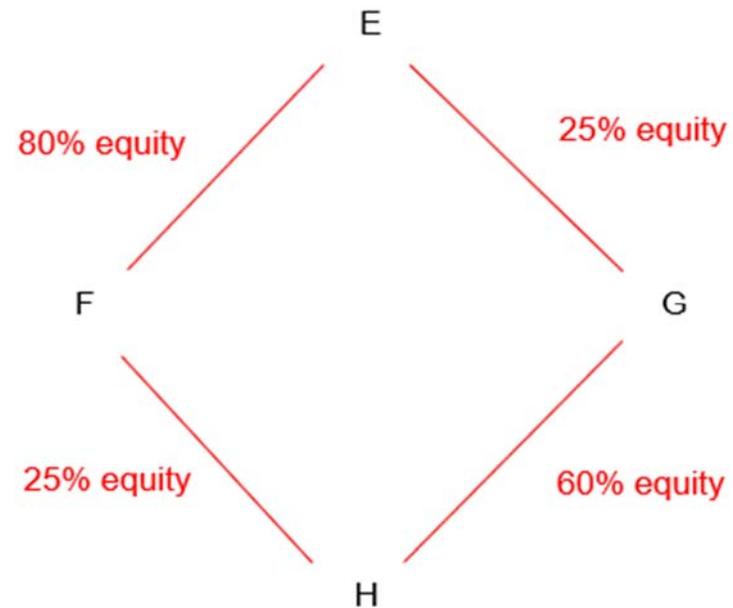
Aggregation of interests

- C controls A and B
- A and B between them control $\geq 30\%$ of the votes in D



- A and B (and C) in concert with D under presumption (1) (because C controls A and B)

- E/F and G/H in concert under both presumption (1) and presumption (2)
- E/G and F/H not in concert on stand-alone basis



- E in concert with H under presumption (2)
- E has 35% indirect equity interest in H (20% via F; 15% via G) (first limb of P(2))
- F in concert with H because it is controlled by E (second limb of P(2))

Investment entities: introduction

- Three key parties:
 - the investment entity
 - the investment management/adviser
 - investors in the investment entity
- Where investment manager/adviser and/or investor is part of a wider group (determined by reference to definition of “control” in new presumption (1)), implications for members of wider group:
 - outside of an offer
 - in the context of an offer



Investment entities: the “golden rules”

1. **Fund manager** treated as **interested in** shares it manages on a discretionary basis
 - **client** of independent fund manager not treated as interested in shares which fund manager manages on its behalf (*Note 11 on the definition of “interests in securities”*)
2. **Investment manager/adviser** to an offeror (or an investor in a consortium)/offeree (and persons under the same “control” as the investment manager/adviser) presumed to be acting in concert with that offeror/offeree (*presumption (5) of the definition of “acting in concert”*)
3. Where a **limited partnership** or **investment fund**:
 - **invests in a bid vehicle**; or
 - acquires an **interest in shares in a Code company**,

new presumptions (1) and/or (2) will cause an **investor** in the limited partnership or investment fund to be presumed to be acting in concert with:

- the **bid vehicle** (in the context of an offer); or
- the **limited partnership** or **investment fund** (outside of an offer),

if the investor’s % interests in the LP/fund mean that new presumptions would apply if the LP/fund were a company (*Note 7 on the definition of “acting in concert”*)

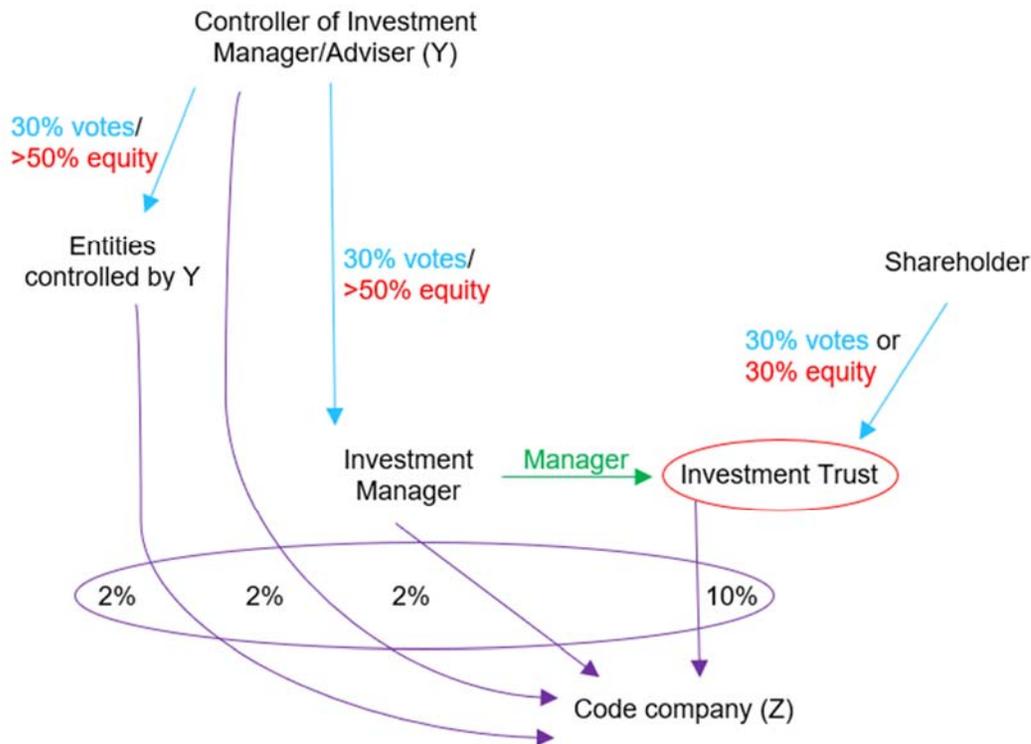


Investment companies (1)

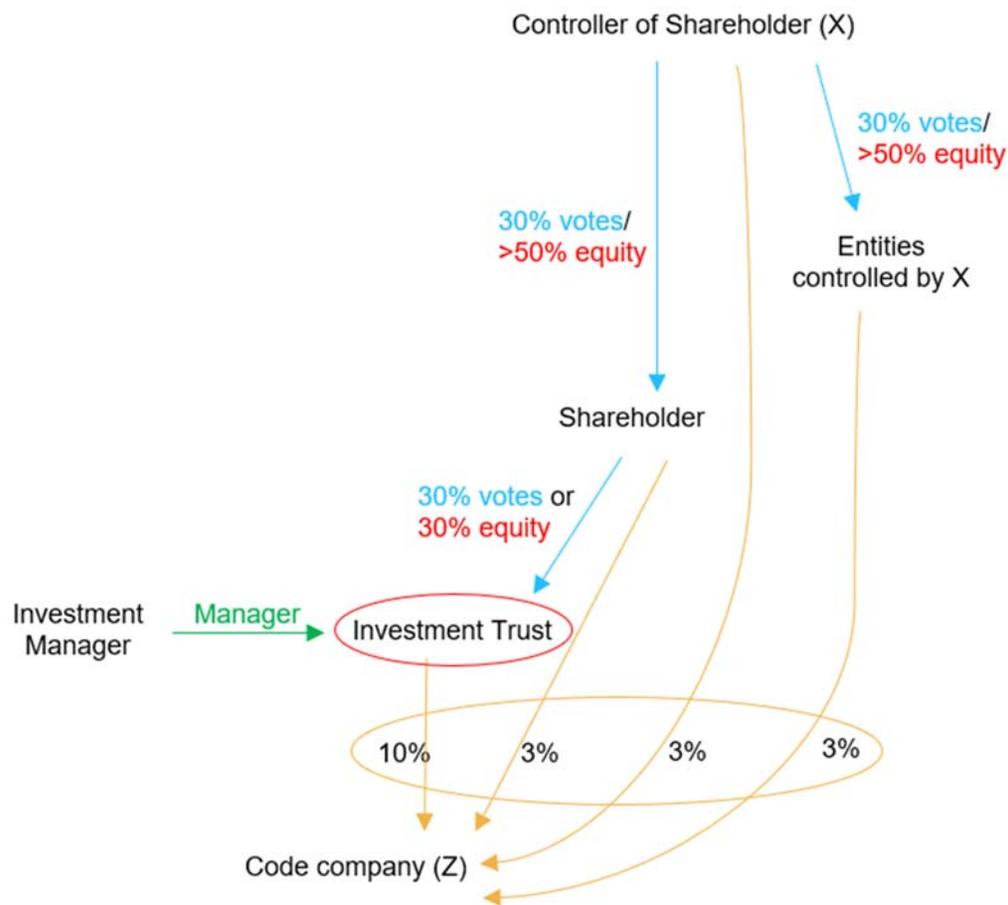
Outside of an offer

Shares in Z held by **Investment Trust** (10%) required to be aggregated **separately** with other shares in Z owned or controlled by **each of**:

- (i) **Investment Manager** and related entities (6% shown in purple); and



Investment companies (2)



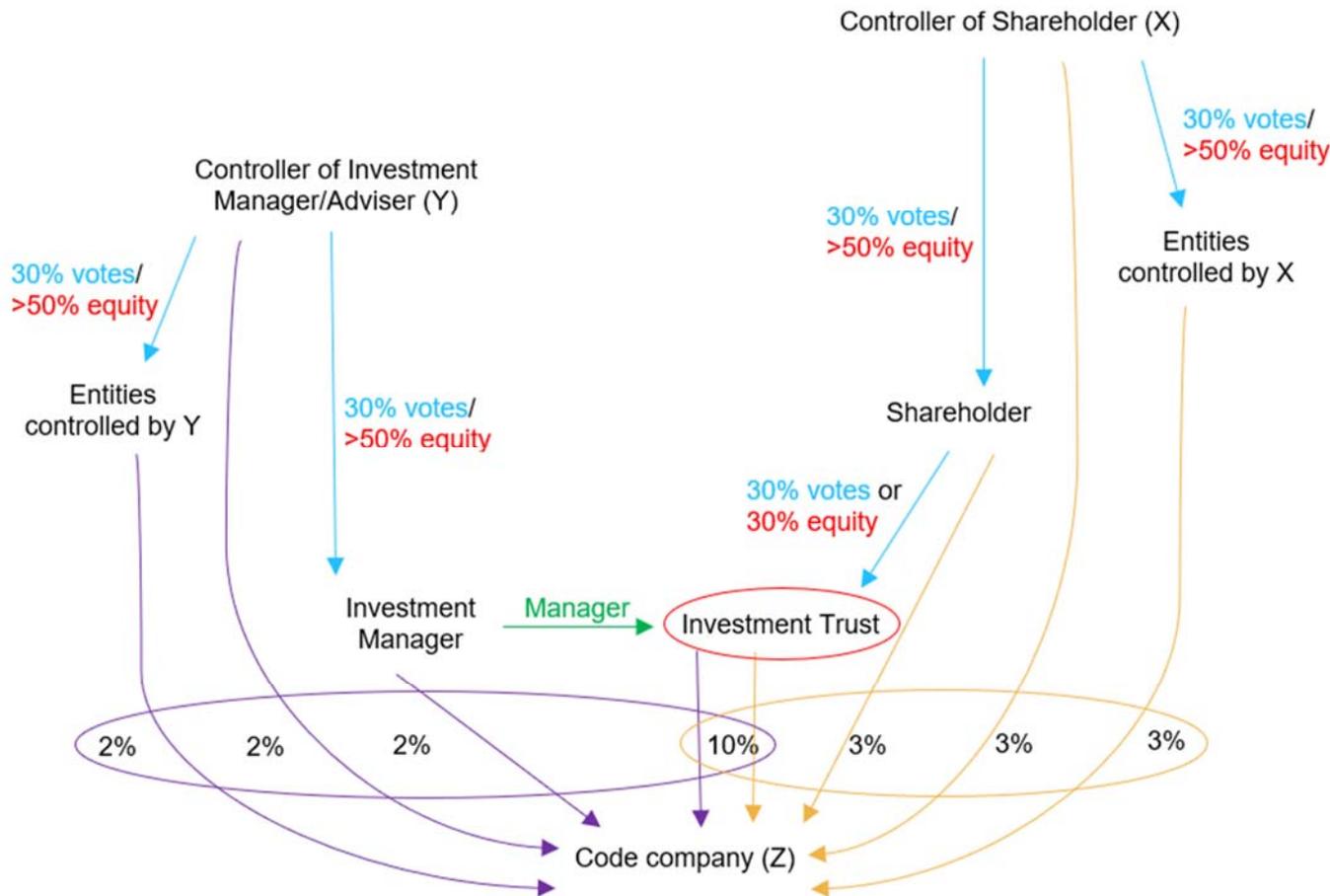
Outside of an offer

Shares in Z held by **Investment Trust** (10%) required to be aggregated **separately** with other shares in Z owned or controlled by **each of**:

- (ii) **≥30% Shareholder** and related entities (9% shown in orange),



Investment companies (3)



Outside of an offer

Shares in Z held by **Investment Trust** (10%) required to be aggregated **separately** with other shares in Z owned or controlled by **each of**:

- (i) **Investment Manager** and related entities (6% shown in purple); and
- (ii) **≥30% Shareholder** and related entities (9% shown in orange),

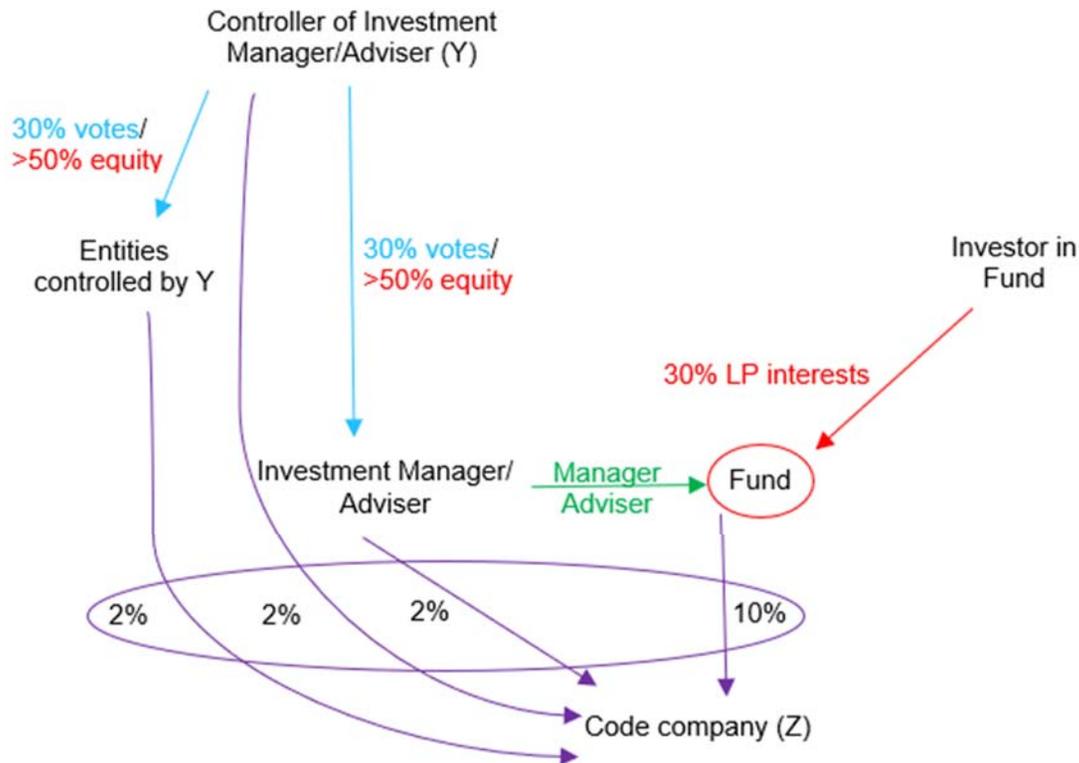
but no requirement for shares in Z owned or controlled by groups in (i) and (ii) both to be aggregated with each other

In the context of an offer by IT for Z

Holdings of **both** groups (Investment Manager etc, Shareholder etc) are required to be aggregated



Investment funds (1)



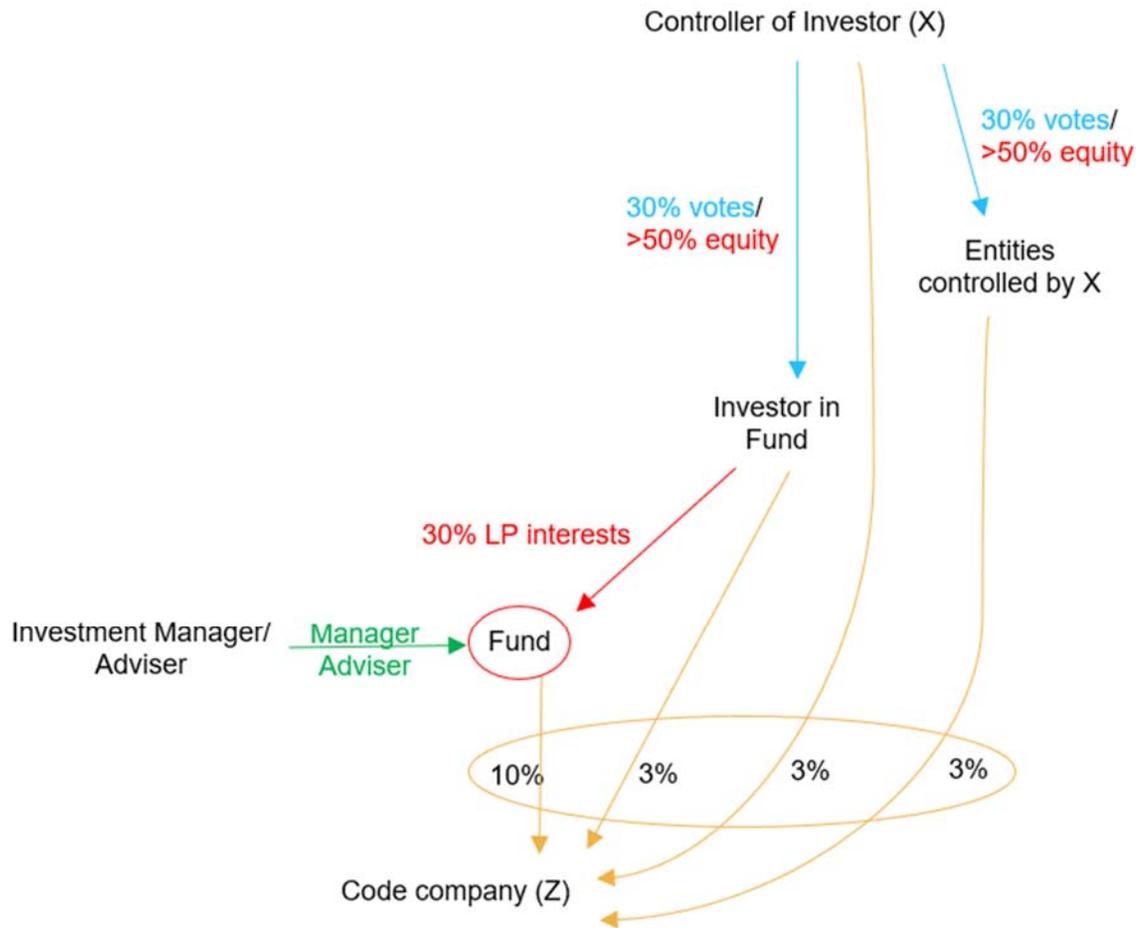
Outside of an offer

Shares in Z held by **Fund** (10%) are required to be aggregated **separately** with other shares in Z owned or controlled by each of:

- (i) the **Investment Manager/Investment Adviser** and related entities (6% shown in purple); and



Investment funds (2)



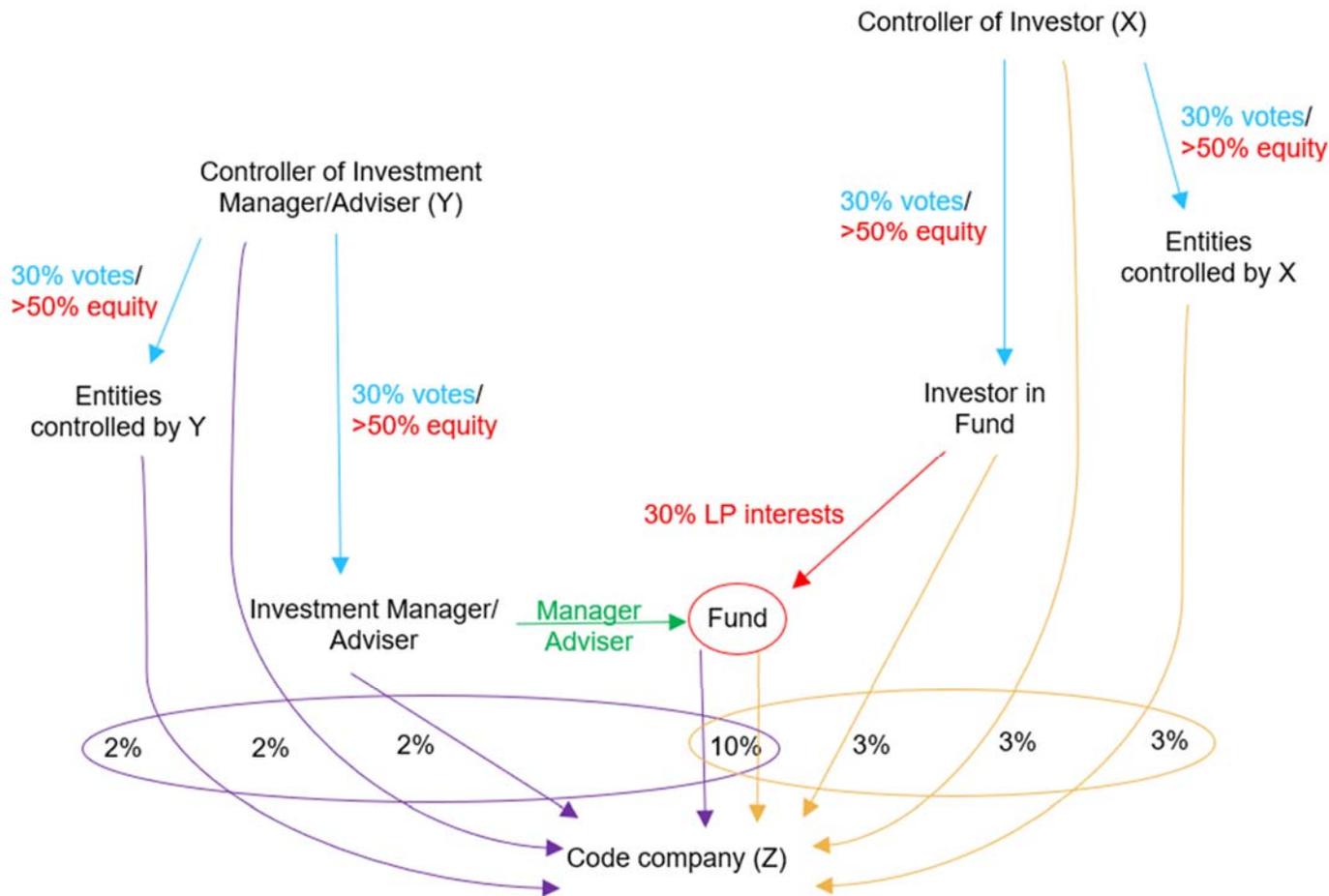
Outside of an offer

Shares in Z held by **Fund** (10%) are required to be aggregated **separately** with other shares in Z owned or controlled by each of:

- (ii) the $\geq 30\%$ **Investor in the Fund** and related entities (9% shown in orange),



Investment funds (3)



Outside of an offer

Shares in Z held by **Fund** (10%) are required to be aggregated **separately** with other shares in Z owned or controlled by each of:

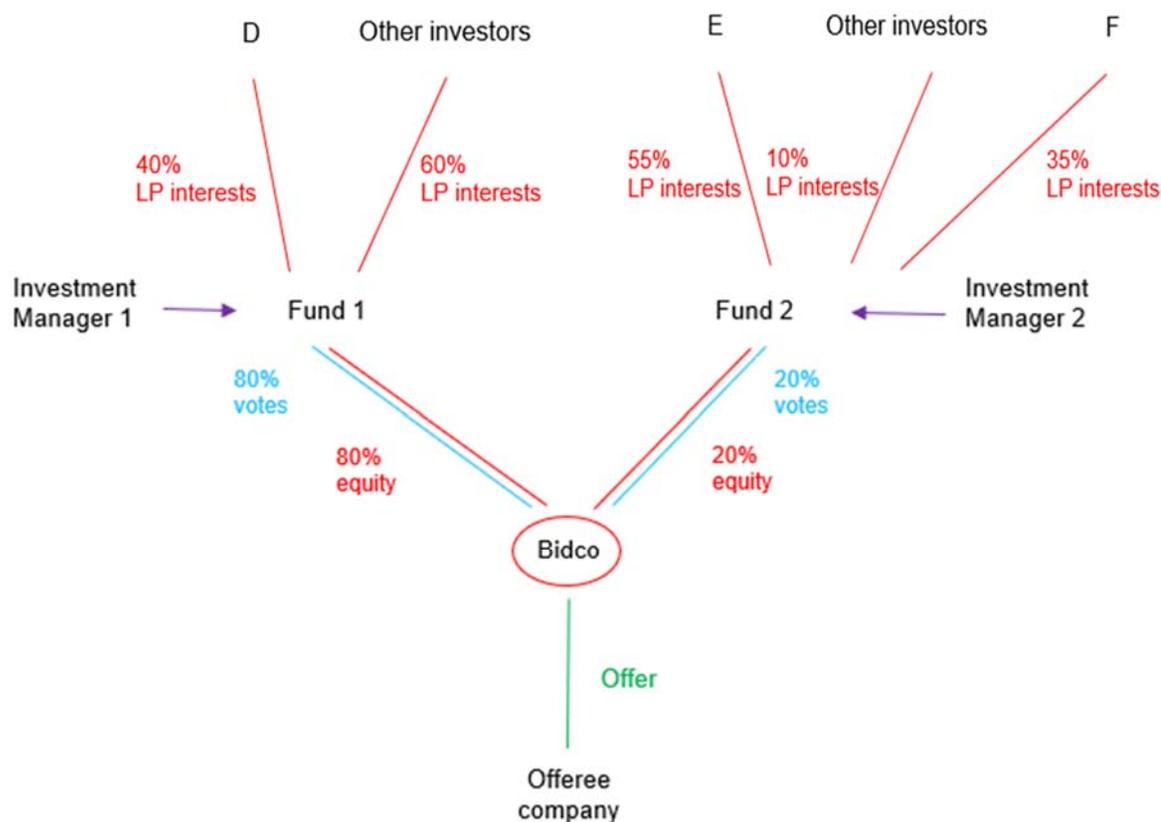
- (i) the **Investment Manager/Investment Adviser** and related entities (6% shown in purple); and
- (ii) the **≥30% Investor in the Fund** and related entities (9% shown in orange),

but no requirement for the shares in Z owned or controlled by groups (i) and (ii) both to be aggregated with each other



Application to new bidding vehicles

- Fund 1 and Fund 2: in concert with Bidco under Note 6 of the definition of “acting in concert”
- Investment Managers to Fund 1 and Fund 2: in concert with Bidco under new presumption (5)
- D: in concert with Bidco under new presumption (2) (32% indirect interest)
- E: in concert with Bidco under new presumption (1) (>50% interest in Fund 2)
- F: not in concert with Bidco (<50% of Fund 2; and <30% indirect interest in Bidco)



Rule 7.2: Connected fund managers and principal traders

- No substantive change
- Therefore, the presumption that connected fund managers and/or connected principal traders which are acting in concert with an offeror/offeree company under any of new presumptions (1), (2), (5) or (6) will apply only from the earlier of when:
 - offeror/offeree company is first publicly identified; or
 - connected fund manager/connected principal trader is made aware of possible offer
- Prior dealings not relevant
- Treatment in Rule 7.2 may be applied to a person which is presumed to be acting in concert with an offeror/offeree company which is not a “connected” fund manager/principal trader



Offers made by new bid vehicles: Note 6 on the definition of “acting in concert”

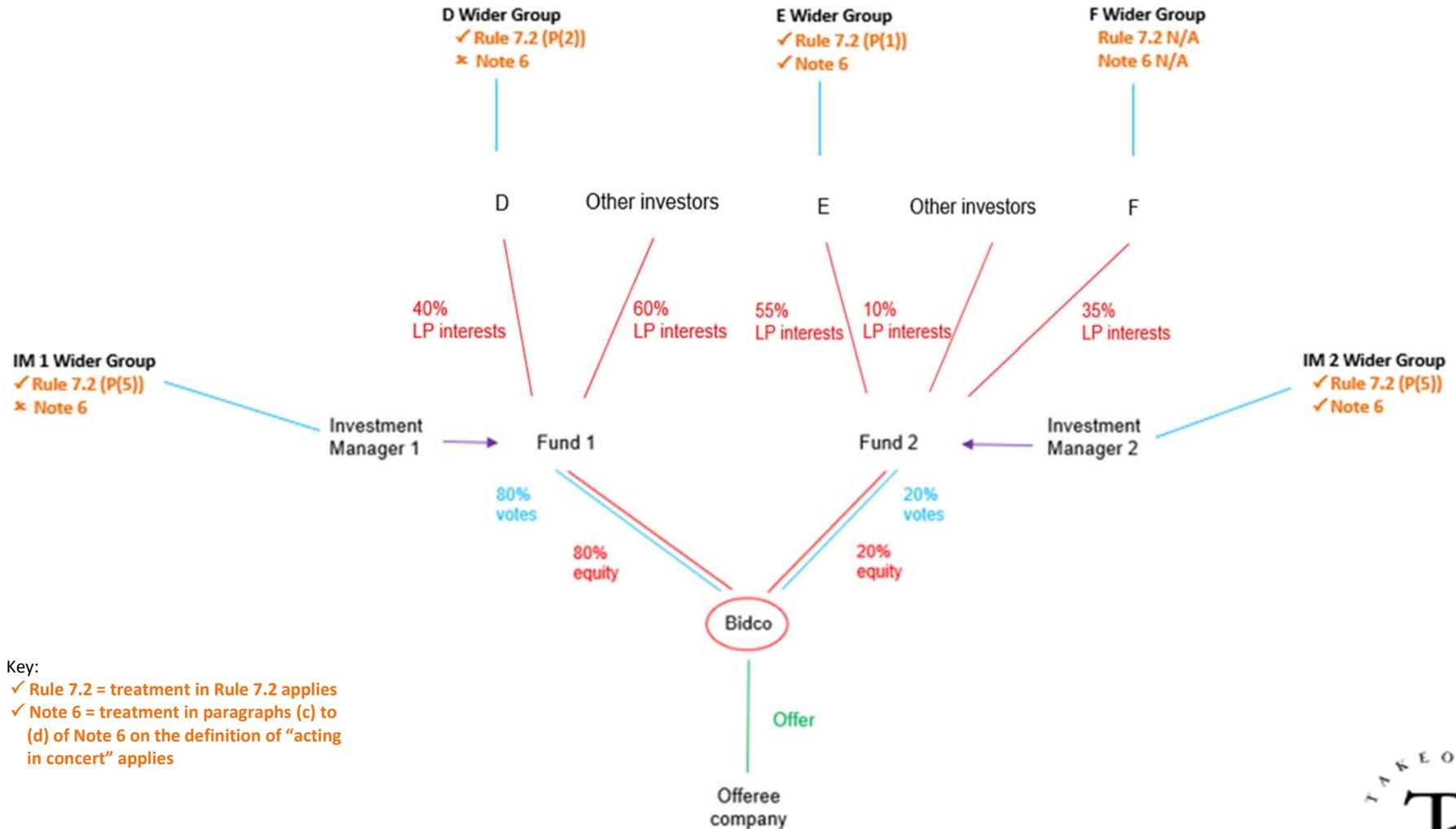
- Any investor in a new vehicle formed to make an offer treated as acting in concert with offeror
- Where investor is part of a **larger organisation**, Panel can waive application of new presumption (1) or new presumption (5) to rest of that organisation if Panel satisfied as to independence and depending on size of investment

	Current Note 6	Proposed Note 6
Normally waive	≤10%	≤10%
May agree to waive	>10-50%	>10-30%
Will not normally waive	>50%	>30%

- Where investment is made by a fund, “investor” refers to:
 - (i) the investment manager/adviser to the fund (new presumption (5)); or
 - (ii) an investor in the fund (new presumption (1))



Application of Rule 7.2 and Note 6 on the definition of “acting in concert”



Key:
 ✓ Rule 7.2 = treatment in Rule 7.2 applies
 ✓ Note 6 = treatment in paragraphs (c) to (d) of Note 6 on the definition of “acting in concert” applies



Directors and companies

In the context of an offer

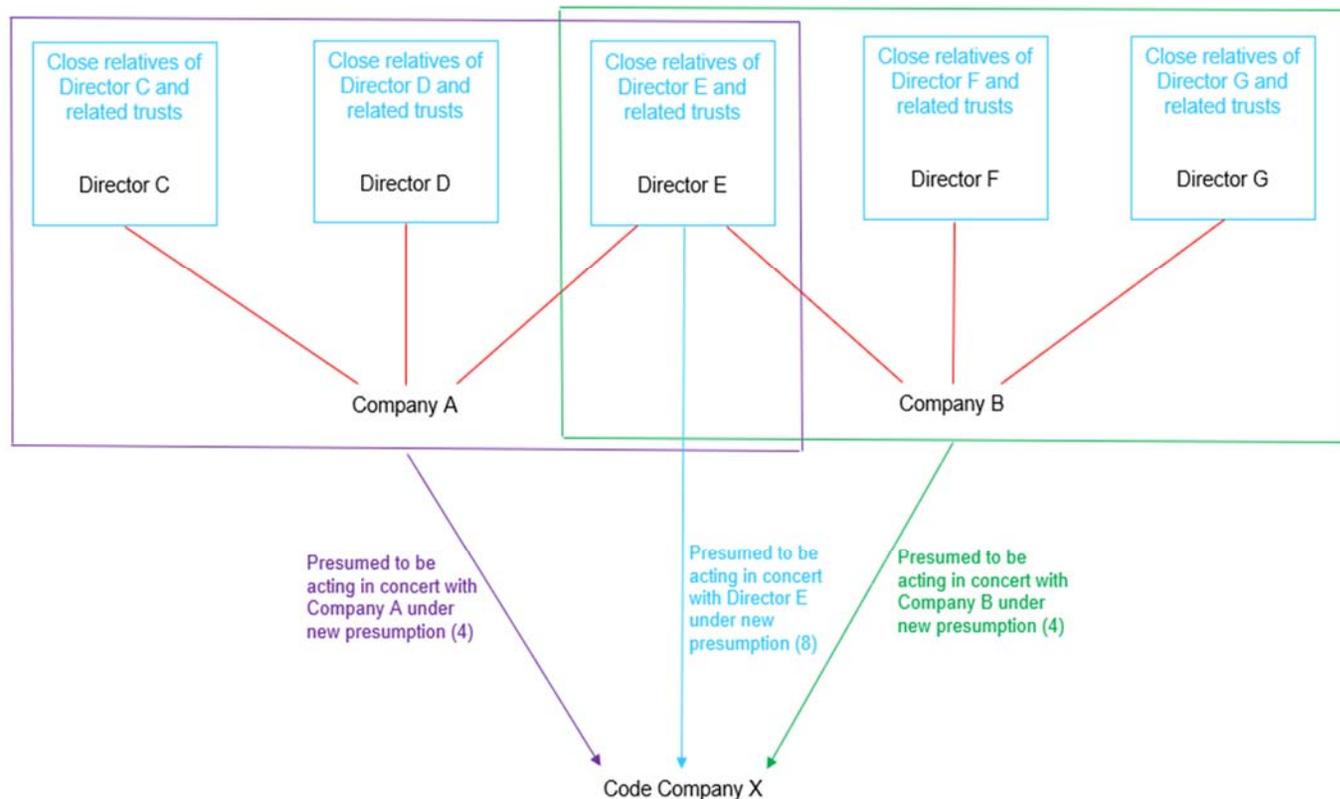
- Director A acting in concert with each of Company B and Company C; but
- Company B and Company C not acting in concert with Director A or with each other



Directors and companies

Outside of an offer

- Directors C, D and E (and their close relatives etc) acting in concert with Company A; and
- Directors E, F and G (and their close relatives etc) acting in concert with Company B; but
- Company A and Company B not acting in concert with Director E or with each other

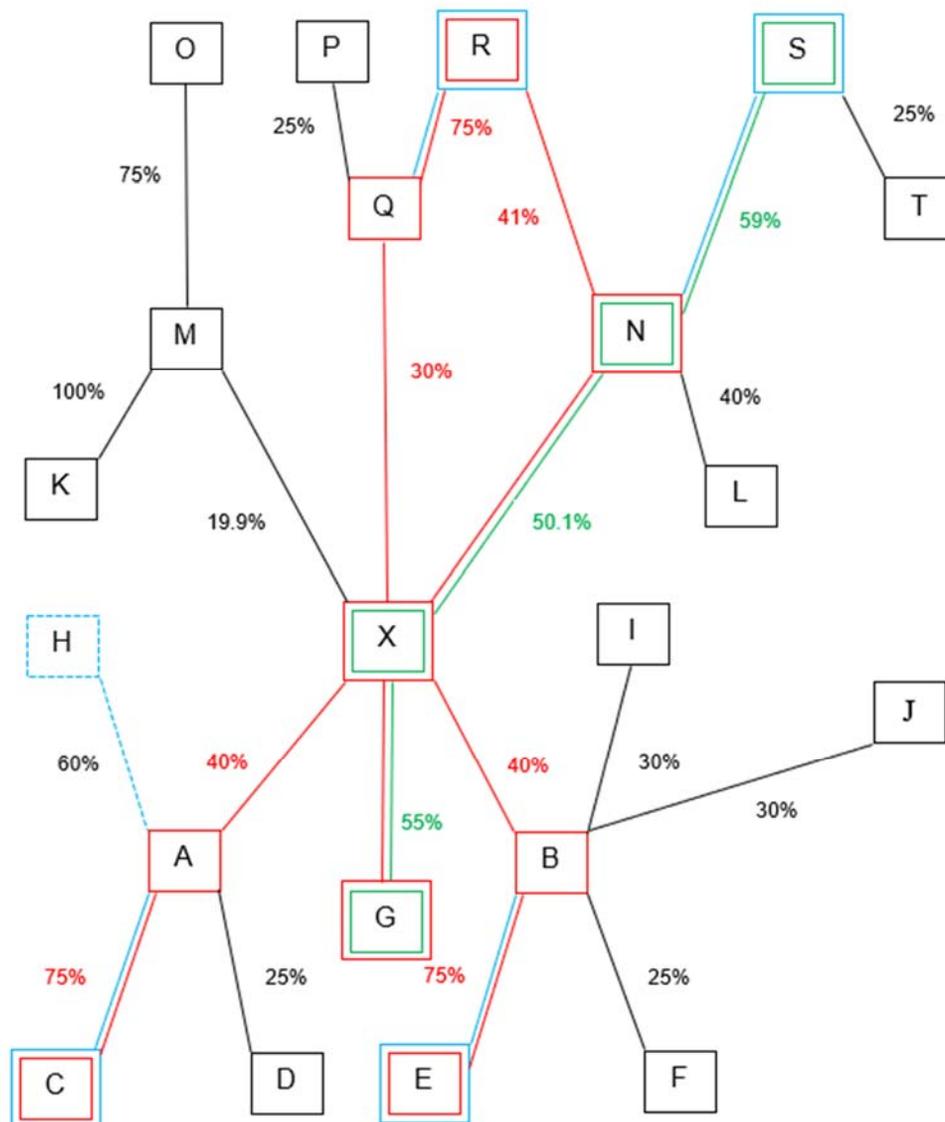


Other proposed changes

- **Pension funds** – reversing polarity of presumption (3) (as for presumption relating to directors)
- **Rule 4.4** – restriction on acquisitions of interests in offeree company securities extended to any fund manager/principal trader connected with offeree (not just offeree adviser/broker)



Appendix E of the PCP: holdings of equity share capital*



— : presumed to be acting in concert with X in relation to a Code company (including an offeree company for which X is making an offer) under the new presumption (1) on account of it controlling, being controlled by or being under the same control as X (as an interest in a majority of the equity share capital represents control)

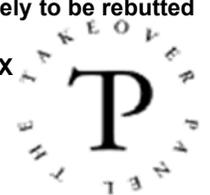
— : presumed to be acting in concert with X in relation to a Code company (including an offeree company for which X is making an offer) under the first limb of the new presumption (2) on account of either (i) it having a direct or indirect interest in 30% or more of the equity share capital of X or (ii) X having a direct or indirect interest in 30% or more of the equity share capital of it

— : presumed to be acting in concert with X in relation to a Code company (including an offeree company for which X is making an offer) under the second limb of the new presumption (2) on account of it controlling, being controlled by or being under the same control as an entity presumed to be acting in concert with X under the new presumption (2) (as an interest in a majority of the equity share capital represents control)

--- : as immediately above, but presumption likely to be rebutted

— : not presumed to be acting in concert with X

* Updated from Appendix E as stated in PCP



Questions

