

Insights

TAKEOVER PANEL CONSULTATION ON THE APPLICATION OF THE TAKEOVER CODE

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SUMMARY

A new Takeover Panel consultation proposes to narrow the scope of the companies subject to the Takeover Code (the “**Code**”). Under the proposals, the Code would only apply to a company which has its registered office in the UK, the Channel Islands or the Isle of Man (“**UK registered**”) and either:

- any of the company’s securities are admitted to trading on a UK regulated market ie. the Main Market, a UK multilateral trading facility ie. AIM, or a stock exchange in the Channel Islands or the Isle of Man (“**UK listed**”); or
- the company was UK listed at any time during the three years prior to the relevant date.

Subject to transitional provisions, the Code would no longer apply to a public or private company which is neither UK listed nor UK listed during the three years prior to the relevant date.

BACKGROUND

The current application of the Code

UK registered and securities admitted to trading on a UK regulated market, a UK MTF or any stock exchange in CI/IoM exchange	UK registered unlisted public company	UK registered private company
Subject to Code (no residency test)	Subject to Code only if residency test* satisfied	Subject to Code only if both residency test and ten year rule satisfied**

*Residency test - central place of management and control in UK, Channel Islands (CI)/Isle of Man (IoM)

Ten year rule - any securities have been admitted to trading on a UK regulated market or a UK MTF or on any stock exchange in the CI/IoM at any time during the ten years prior to the “relevant date**” (the date of the announcement of an offer or possible offer for the company)

PROPOSALS

The Code Committee has concluded that the scope of the Code should be narrowed, clarified and refocussed on those companies which might expect to be subject to takeover regulation. This point addresses the fact that many non-UK-listed public and private companies are not even aware they are subject to the Code and when it becomes apparent, they look for ways for it not to apply.

The abolition of the residency test will remove the need for subjective judgements as to whether a majority of a company’s directors are resident in the UK, CI/IoM and also situations where a company may inadvertently fall in and/or out of the Code’s remit simply as a result of a change in board composition.

Under the proposals, the Code would only apply to a UK registered company if, on or after the implementation date (ie. the date the changes are implemented):

- the company is UK listed; or
- the company was UK listed at any time during the three years prior to the relevant date (regardless of whether it satisfies the residency test).

TRANSITIONAL ARRANGEMENTS

The Code Committee proposes to introduce transitional arrangements which will apply for three years from the implementation date – referred to as the “**transition period**”. This is to allow affected companies and their shareholders the opportunity, should they wish to do so, to put in place alternative arrangements: For example, amending the company’s articles to introduce provisions equivalent to certain aspects of the Code or make arrangements for shareholders to exit their investment if they no longer want to hold shares in a company which does not have the protections afforded by the Code.

An unlisted public or private company which is subject to the Code on the implementation date will be a transition company and subject to the transitional arrangements. All transition companies will cease to be subject to the Code by no later than the end of the three year transition period.

During the transition period, the residency test will continue to apply and the Code will only apply to a transition company on the relevant date if it satisfies the residency test at that time.

SUMMARY OF HOW THE PROPOSALS WILL IMPACT COMPANIES

- A UK listed company subject to the current Code will continue to be subject to the Code under the new proposals and no transitional arrangements will apply.
- A UK listed company subject to the Code prior to the implementation date but which ceases to be UK listed in the transition period will continue to be subject to the Code for three years after delisting.
- If a private company was UK listed in the 10 years before the implementation date, the company will be a Code company until the earlier of: (i) the end of the transition period and (ii) the end of the 10 year run-off period under paragraphs (A) to (D) of section 3(a)(ii) of the Introduction to the Code provided that the company satisfies the residency test on the relevant date.
- Where a transition company is a non-UK-listed public company or a private company which was UK listed on a date less than three years prior to the implementation date, the company will cease to be a Code company at the end of the transition period.
- Where a transition company is either (i) a non-UK-listed public company which was listed between three and 10 years prior to the implementation date or (ii) a private company which was UK listed between three and 10 years prior to the implementation date or (iii) a public company which has never been listed, the company will cease to be a Code company at the end of the transition period or, where a private company's run off period will expire before the end of the transition period, at the end of that run-off period.

The [consultation](#) will close on 31 July 2024 and the Code Committee plans to publish a response statement in Autumn 2024 with implementation one month later.

RELATED PRACTICE AREAS

- Securities & Corporate Governance
- M&A & Corporate Finance
- UK Public Company

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