

Insights

TAKEOVER PANEL RESPONSE ON THE APPLICATION OF THE TAKEOVER CODE

Nov 12, 2024

SUMMARY

The Takeover Code (the “**Code**”) has published its [response](#) to its consultation on the application of the Code and is adopting the amendments previously proposed in [PCP 2024/1](#) subject to some modifications. The changes will take effect on 3 February 2025 and transitional arrangements will run for two years until 2 February 2027.

The Code has been amended to refocus its application on companies which are registered 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 and Aquis Growth Market, or a stock exchange in the Channel Islands or the Isle of Man ie. TISE (“**UK quoted**”); or
- the company was UK quoted at any time during the two years prior to the relevant date.

Subject to transitional provisions, the Code will no longer apply to a public or private company which ceased to be UK quoted more than two years prior to the relevant date.

BACKGROUND

Current application of the Code:

UK registered public company with securities admitted to trading on a UK regulated market, a UK MTF or any stock exchange in CI/IoM exchange (“UK quoted”)	Not a UK quoted public company (includes public companies with securities traded solely on overseas market)	Certain UK registered private companies

Subject to Code (no residency test)	Subject to Code only if residency test* satisfied	Subject to Code only if both residency test and one of the four situations in Section 3(a)(ii) applies eg. UK quoted at any time in the previous ten years
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*Residency test – company has its central management and control in UK, CI/IoM

SUMMARY OF CHANGES

Under the changes, the Code would only apply to a UK registered company if, on or after the 3 February 2025 (the “Implementation Date”) the:

- company is UK quoted; or
- company was UK quoted at any time during the **two years** (originally proposed three years) prior to the relevant date ie. the date on which an announcement is made of an offer or possible offer under the Code.

Subject to transitional provisions, the Code will no longer apply to a public or private company:

- which ceased to be UK quoted more than two years prior to the relevant date;
- whose securities are or were admitted to trading solely on an overseas market;
- whose securities are or were traded using a matched bargain facility e.g. Asset Match or JP Jenkins.

The Code will also not apply to a UK registered company which is not UK quoted (and which has not recently been UK quoted) solely by virtue of its securities or other interests being traded using another platform, such as a Private Intermittent Securities and Capital Exchange System (PISCES), a private market such as TISE Private Markets or a secondary market of a crowdfunding platform.

TRANSITIONAL ARRANGEMENTS

For two years from the Implementation Date, the Code will apply to a transition company (“transitional arrangements”) to ensure companies have a period of time to adjust to the new regime. 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.

A “transition company” is either:

- a company which is a public company which is not UK quoted or a private company subject to the Code on the Implementation Date; or

- a company to which the Code would apply immediately prior to the Implementation Date but for the fact it does not satisfy the residency test at that time.

Therefore:

- whether a company is a transition company would be determined by the company's status immediately prior to the Implementation Date; and
- whether a transition company is a Code company in respect of a specific transaction would be determined on the "relevant date". For example, if a transition company is not UK resident on the relevant date, it will not be a Code company in respect of the possible offer (even if it was UK resident, and was a Code company, immediately prior to the Implementation Date).

In summary:

- A UK quoted company subject to the Code on 2 February 2025 will continue to be subject to the Code under the changes and no transitional arrangements will apply.
- A UK quoted company subject to the Code prior to the Implementation Date but which ceases to be UK quoted in the transition period will continue to be subject to the Code for two years after delisting.
- A public unquoted company subject to the Code on 2 February 2025 will be a transition company and the Code will apply until the earlier of the end of (i) the transition period and (ii) the 10-year run off period provided the company is UK resident at the time of the transaction.
- A private company that was UK quoted at any time in the 10 years before the Implementation Date will be a transition company and the Code will apply until the earlier of the end of (i) the transition period and (ii) the 10-year run off period in former s3(a)(ii)(A) provided the company is UK resident at the time of the transaction.

RELATED CAPABILITIES

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

MEET THE TEAM



Nicholas Myatt

London

nicholas.myatt@bclplaw.com

[+44 \(0\) 20 3400 4767](tel:+442034004767)



Tom Bacon

London

tom.bacon@bclplaw.com

[+44 \(0\) 20 3400 3706](tel:+442034003706)



Tessa Hastie

London

tessa.hastie@bclplaw.com

[+44 \(0\) 20 3400 4516](tel:+442034004516)

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