



Takeover Panel narrows scope of companies under City Code on takeovers and mergers

27 November 2024

In April 2024, the UK Takeover Panel (the Panel) published [Public Consultation Paper 2024/1](#) (the PCP), outlining proposals to narrow the scope of companies to which the City Code on Takeovers and Mergers (the Code) applies.

The proposals sought to refocus the jurisdictional applicability of the Code on companies which are registered in the United Kingdom (U.K.), the Channel Islands or the Isle of Man, and whose securities are (or were recently) admitted to trading on a U.K. regulated market, a U.K. multilateral trading facility (MTF), or a stock exchange in the Channel Islands or the Isle of Man. The PCP also put forward transitional arrangements for companies to which the Code currently applies, and to which the Code will no longer apply, being three years from the implementation date (Monday, 3 February 2025).

On 6 November 2024, the Panel published its Response Statement, [RS 2024/1](#), and [Instrument 2024/3](#), effecting amendments to section 3 of the Introduction to the Code (**Code amendments**).

The Code Amendments

Jurisdictional Scope and Transitional Arrangements

Companies that are “U.K. registered” (as referred to in RS 2024/1), or have their registered offices in the UK, the Channel Islands or the Isle of Man, and are “U.K. quoted”, or have any securities admitted to trading on a U.K. regulated market, a U.K. MTF or a stock exchange in the Channel Islands or the Isle of Man, will continue to be subject to the Code.

The Code will also apply to a U.K. registered company that was U.K. quoted at any time in the two years before the date on which an announcement is made of an offer or possible offer for the company or on which another significant event under the Code occurs (the “relevant date” as defined in a new Transitional Appendix to the Code). The Code amendments are a welcome development, particularly for listed companies that re-registered as private companies but still found themselves caught by the Code for a ten-year period.

The Code Committee has adopted transitional arrangements to ensure a smooth implementation of the new framework. These arrangements include a transition period (“run-off period”) for a period of two years from the implementation date rather than a period of three years as proposed in the PCP. This means that if a company was U.K. quoted immediately prior to the implementation date but ceases to be U.K. quoted during the transition period, it will still be considered a Code company for two years from the

date it ceased to be U.K. quoted. This ensures that shareholders of such a company continue to benefit from the protections offered by the Code during this period, which provides a level of continuity and stability for such shareholders, and allows them some time to adapt to the changes to the Code.

During the run-off period, if a transition company, which is a public company, decides to re-register as a private company and, as a result of the re-registration, the Code would no longer apply to the company, early consultation with the Panel is advised so that guidance can be given on the appropriate disclosure to be made to the company's shareholders. The Code Committee sees the run-off period as sufficient time to enable transition companies to make alternative arrangements, including:

1. coming under the fold of the jurisdictional applicability of the Code, for example, by admitting the company's securities to trading on an in-scope market; and
2. suggesting amendments to constitutional documents such as articles of association, subject to shareholder approval, to include provisions equivalent to certain Code rules.

The Response Statement provides a detailed table summarising the application of the Code before, during, and after the transition period which helps clarify the status of companies and whether they are considered Code companies based on their registration and trading status. Additionally, the Response Statement outlines specific provisions for companies that were U.K. quoted less than two years prior to the implementation date. These companies will be considered Code companies for two years from the date they ceased to be U.K. quoted.

The Code will therefore only apply to a U.K. registered company that is either U.K. quoted, or was U.K. quoted, at any time during the two years before the relevant date, irrespective of (1) whether it satisfies the residency test (which requires certain companies to have their place of central management and control in the U.K., Channel Islands or Isle of Man for the Code to apply); and (2) regardless of whether the company's securities are admitted to trading on an overseas exchange. The current residency test requirement will be removed entirely from the end of the transition period.

Out-of-Scope Companies

Subject to transitional arrangements, the Code will no longer apply to the following U.K. registered companies, unless the company has been U.K. quoted at any time in the two years before the relevant date:

1. a public or private company that ceased to be U.K. quoted more than two years before the relevant date;
2. a public or private company whose securities are, or were previously, traded solely on an overseas market;
3. a public or private company whose securities are, or were previously, traded using a matched bargain facility, such as JP Jenkins or Asset Match;
4. any other public company that is not U.K. quoted; and
5. a private company which filed a prospectus at any time during the ten years before the relevant date, unless the company had been U.K. quoted at any time during the two years prior to the relevant date.

By way of a new section 3(a)(iv) of the introduction to the Code, the Code amendments have also codified the existing position of the inapplicability of the Code to a company with a sole beneficial owner.

Additional Code Amendments

1. Waivers under the Code

As part of the Code amendments, the Code Committee has also adopted a new section 3(a)(v) of the Introduction to the Code, providing the Panel the ability to grant a waiver from the application of some or all of the provisions of the Code in respect of a company which has ceased to be U.K. quoted. The Code Committee has explained that the Panel Executive would normally be expected to consider a waiver under Rule 9 of the Code only in the context of the specific circumstances of a proposed transaction.

The Code Committee confirmed that it would not expect the Panel Executive normally to grant such a waiver in the absence of a transaction or event to which the Code would otherwise apply. Where it considers that it is inappropriate or disproportionate for the Code to apply to the company in relation to the particular transaction, the Panel Executive will likely grant a Rule 9 waiver on the applicability of the Code.

2. Re-registrations and cancellation of admission to trading

The Code Committee has adopted a new section 3(e) of the Introduction to the Code. This obliges a U.K. quoted company that is looking to cancel the admission of its securities to trading on a U.K. regulated market, a U.K. MTF or a stock exchange in the Channel Islands or the Isle of Man, to make an appropriate disclosure to its shareholders, notifying them of the company going into a two year run-off period due to the cancellation, after which the Code will no longer apply.

Concluding Remarks

The Code amendments represent a significant shift in the regulatory landscape and mean that a significantly reduced number of companies are now caught by the Code. By narrowing the scope of companies subject to the Code and introducing transitional arrangements, the Code amendments aim to create a more focused and effective regulatory framework, including for companies that de-listed under the previous regime, but were nonetheless still subject to the Code for a ten-year period.

The Code amendments are likely to be seen by companies as a welcome development in that they introduce greater certainty and flexibility, for instance, with the abolition of the residency test. The abolition of the residency test means that a company can now have a fixed position as to whether it comes under the fold of the Code, as opposed to falling in and out of scope, with jurisdictional applicability being contingent on when the composition of a board changes, and where each board member resides.

The abolition of the residency test also means that companies that are only listed on the NYSE or NASDAQ markets would no longer be subject to the Code, even if they have their place of central place of management and control in the UK., Channel Islands or Isle of Man. Foreign Private Issuers or FPIs – these being non-U.S. domiciled companies that have chosen the NYSE or NASDAQ as their primary listing venue – will also have more certainty as to the jurisdictional remit of the Code. Out-of-scope companies will also benefit from greater commercial flexibility, when negotiating deals with the majority shareholders.

The Code amendments are due to take effect on 3 February 2025, with transitional arrangements being put in place as part of a two-year transition period from 3 February 2025 to 3 February 2027. The new section 3(a)(iii) of the Introduction and the Transitional Appendix will automatically cease to have effect on 3 February 2027 and those provisions will be deleted from the Code without further consultation.

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