

UK PUBLIC M&A UPDATE

UK Takeover Panel to end shared jurisdiction regime after Brexit

27 March 2019

In November 2018, the UK Takeover Panel (the “Panel”) published Panel Consultation Paper 2018/2 (the “PCP”) which set out proposed amendments to the UK Takeover Code (the “Code”) as a result of the UK’s withdrawal from the EU (“Brexit”). This month, the Panel published its Response Statement (the “Response Statement”) confirming the changes that will come into effect after Brexit. The main change is that, following Brexit, the Panel will no longer regulate (in whole or part) offers for EEA-registered companies that previously fell under the shared jurisdiction regime of Directive 2004/25/EC (the “Takeovers Directive”).

If you have any questions concerning the changes to the Code, please reach out to your regular firm contacts or to:

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The full text of PCP 2018/2 can be accessed via this [link](#). The full text of RS 2018/2 can be accessed via this [link](#). The full text of the Takeover Code can be accessed via this [link](#).



BACKGROUND

Prior to the implementation of the Takeovers Directive in May 2006, the Code applied only to companies incorporated in the UK, Channel Islands or the Isle of Man.

Under the current rules, where a company is incorporated in one EEA Member State and its securities are admitted to trading on a regulated market in another Member State (but not also on a regulated market in the EEA Member State in which it has its registered office), the regulation of any offer for that company is shared between the takeover regulators in the two Member States. For example, an offer for an Irish-registered company with securities listed only on the Main Market of the London Stock Exchange would be subject to the shared jurisdiction of the Panel and the Irish Takeover Panel, with each regulator taking primary responsibility for different aspects of the regulation of the takeover (e.g., in a mandatory offer scenario, the Irish Panel, as the “registered office regulator” would have primary responsibility for determining whether a mandatory offer obligation had been triggered, whereas the Panel, as the “regulated market regulator” would have primary responsibility for determining the minimum price of that mandatory offer, once triggered).

The PCP outlined the changes that the Panel proposed to make to the Code as a result of Brexit (including the Panel’s withdrawal from the shared jurisdiction regime). The Response Statement confirmed that those proposals will be implemented by the Panel following Brexit. The changes and implications are discussed further below.

MAIN CHANGES TO THE CODE

Following Brexit, the Code will no longer apply to (and the Panel will not regulate, in whole or in part) any offer for a company that:

- has its registered office in an EEA Member State and whose securities are admitted to trading on a UK regulated market; or
- has its registered office in the UK and whose securities are admitted to trading on a regulated market in an EEA Member State (and not on a UK

regulated market) and which does not have its place of central management and control in the UK, the Channel Islands or the Isle of Man.

When will the changes be implemented?

The timing of the Panel’s withdrawal from the shared jurisdiction regime will depend on the nature and timing of Brexit. In a “no deal scenario”, the amendments to the Code will come into effect at 11:00pm on Friday 29th March or, if the UK exits the EU at some later date without a formal withdrawal agreement (e.g., a proposed date of 12th April at the time of writing), on that date.

If the UK and EU enter into a withdrawal agreement, the Panel expects the amendments to the Code to come into effect following the end of the transitional period (if any) provided for under the withdrawal agreement.

If an offer for a company subject to the shared jurisdiction regime straddles the Brexit effective date, the Panel will cease regulating the offer immediately when Brexit occurs. In other words, if any such offer takes place, the Panel will “step off the pitch” during the middle of the game.

Which companies will be affected?

The Panel has identified 36 companies to which the shared jurisdiction regime currently applies, the majority of which are registered in Cyprus, Luxembourg and Ireland, but with securities listed only in London. The Panel will not regulate offers for those companies after Brexit irrespective of where their securities are listed and whether or not they are centrally managed in the UK.

The takeover regulators in Cyprus, Luxembourg and the Netherlands have confirmed that, after Brexit, they will also cease to regulate offers for companies registered in those jurisdictions but listed only in London (with the effect that offers for those companies will not be subject to any formal takeover regulation after Brexit). The Irish Takeover Panel has indicated that, after Brexit, it would have full jurisdiction over an offer for a company with its registered office in Ireland and its securities listed on a UK regulated market. This would affect bids for companies such as DCC plc, and Grafton Group plc which have their headquarters in Ireland, and are listed on the FTSE 100 and FTSE 250 respectively.

There are also a handful of UK-registered companies and *societas Europaea* whose securities are listed only in EEA Member States outside the UK, such as Stallergenes Greer plc and Zeal Network SE. Those companies will also fall outside of the Panel's jurisdiction after Brexit, unless the Panel deems their places of central management and control to be in the UK, Channel Islands or Isle of Man (with the residence of the companies' directors being the determining factor). If such companies *do* fall within the jurisdiction of the Code by virtue of their place of central management and control being in the UK, Channel Islands or Isle of Man, the Panel will apply the Code in full.

The Panel has written to all of the shared jurisdiction companies it has identified to make them aware of the upcoming changes.

Practical steps

The Panel suggests that companies should, if appropriate, communicate to their shareholders the consequences of the company no longer falling within the shared jurisdiction regime.

The Panel expects documentation in relation to an offer that may straddle the effective date of Brexit to clarify that the Panel's regulation of such an offer will cease on the effective date of Brexit.

Affected companies may also wish to re-register in the UK following the effective date of Brexit in order to ensure that their shareholders are afforded the protections of the Code after Brexit.

During a debate on the Proposals in the House of Lords, Lord Leigh of Hurley posed the question (perhaps somewhat optimistically), “[*b*]ecause so many companies want to be covered by the Takeover Panel, and indeed cannot be included in various listings unless they are covered by it and thus want to have more shareholders invest in them, does this mean that companies which at the moment are not satisfying the residency test will move their business to the UK to ensure that they do cover the residency test, thereby bringing more employment and more business to the United Kingdom?” Although unlikely to be an option for all companies, re-registration in the UK would ensure jurisdiction over offers remains with the Panel after Brexit.

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