

Companies subject to the UK Takeover Code

As of 30 September 2013, all UK, Channel Islands and Isle of Man incorporated public companies which have securities admitted to trading on a multilateral trading facility in the UK will be subject to the Code, irrespective of their place of central management and control. So, where a UK public company has shares admitted to AIM, but its place of central management and control is overseas, the company will become a Code company in the autumn.

On 15 May 2013, the Takeover Panel published its response statement following its consultation in July 2012 regarding which companies should be subject to the Code. Unless a company's securities are admitted to trading on a regulated market in the UK (such as the London Stock Exchange's main market for listed securities) or on any BCD stock exchange (in which case the Code automatically applies), the Code currently applies a residency test for UK and BCD (public and certain private) companies.

The residency test means that if the place of central management and control of a company is outside the UK or a BCD, the Code does not currently apply to it. For example, where a UK registered company has shares admitted to AIM, but its place of central management and control is overseas (for tax reasons, for instance), the Code does not apply. This is set to change with effect from 30 September 2013.

The residency test is, however, being retained for A) non-traded public companies, B) private companies

potentially subject to the Code because, broadly, they have had securities admitted to trading within the previous 10 years and C) public companies whose securities are admitted to trading on any market which is **not** (i) a regulated market (either in the UK or in another EEA member state); (ii) an MTF in the UK (e.g. AIM or the ISDX Growth Market); or (iii) a BCD stock exchange. So the Code will only apply to UK and BCD companies with shares admitted to trading outside the EEA where such companies satisfy the residency test.

The Panel is still **not** taking jurisdiction over a non-UK or BCD incorporated company even where such a company would like the Code to apply. Accordingly, an AIM-listed but, say, Bermuda-incorporated company, will continue not to be subject to the Code.

Some companies which have historically not been subject to the Code have attempted to incorporate Code principles into their constitution. Where such companies will become Code companies in September, they may need to amend their constitutions

Glossary

BCD - British Crown Dependency (for these purposes, the Channel Islands and the Isle of Man)

Code - the UK Takeover Code

Code company - a company subject to the Code and therefore within the jurisdiction of the Panel

MTF - a multilateral trading facility e.g. AIM and the ISDX Growth Market

residency test - place of central management and control in the UK, the Channel Islands or the Isle of Man

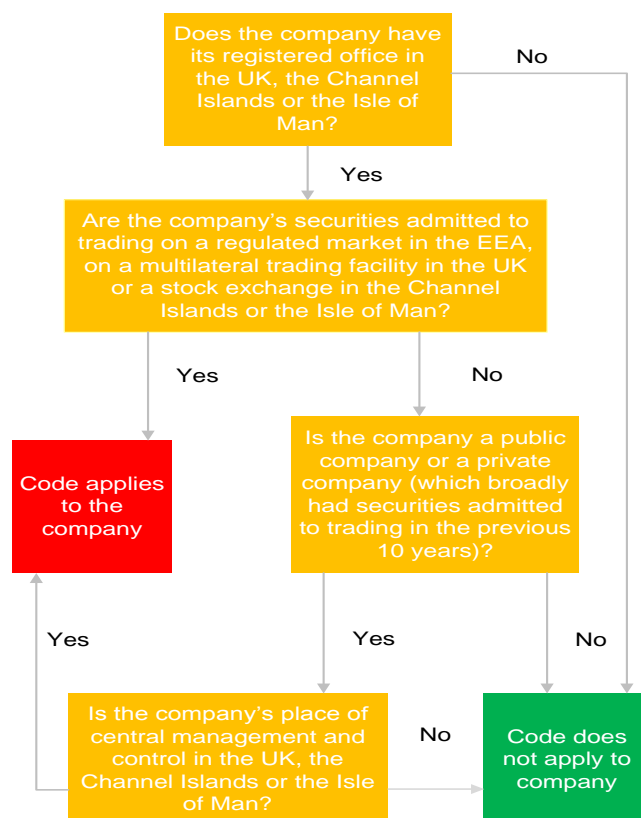
to remove any provisions which might conflict with the provisions of the Code.

This Code change is a significant development for those companies which are affected and swift action should be taken in preparation for the impending change. With that in mind, we have set out overleaf a checklist of actions and we would be more than happy to guide you through these next steps. A diagram is set out overleaf to identify which companies will be Code companies in September.

Next steps:

- analyse whether any companies within your group will become a Code company on 30 September 2013;
- review and amend (if necessary) the constitution of the Code company to remove any articles which seek to replicate provisions of the Code with effect from 30 September 2013;
- prepare directors regarding the consequences of becoming a Code company;
- prepare/update the Code company's defence manual;
- identify whether a shareholder might trigger a Rule 9 mandatory bid on exercise of convertible securities, warrants or options and approach the Panel to seek consent to whitewash retrospectively;
- consider whether any of the Code company's shareholders form a concert party such that further acquisitions would trigger a Rule 9 mandatory bid obligation;
- anticipate the application of the Code in relation to transactions involving the Code company which will straddle the 30 September 2013 implementation date;
- consult the Panel as necessary if there are any concerns regarding the impact of the Code changes on an existing or contemplated transaction.

Code companies – September 2013:



The Panel's Consultation Paper PCP 2012/3 can be viewed at:

<http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/PCP201203.pdf>

The Response Statement RS 2012/3 can be viewed at:

<http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/RS201203.pdf>

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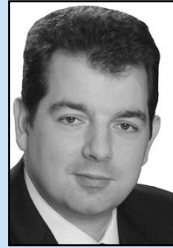
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