

UK Takeover Code to expand jurisdiction in September 2013

Introduction

The Takeover Code will, on 30 September 2013, widen the categories of companies it regulates by:

- > partial removal of the residency test¹ for companies which have their registered offices in the UK, the Channel Islands or the Isle of Man; and
- > clarifying and simplifying the Takeover Code's applicability to private companies.

This is a significant change since AIM listed companies with registered offices in the UK, the Channel Islands or the Isle of Man but whose directors are based overseas will now automatically fall within the regulation of the Takeover Code. Under the current regime, such companies need to have their place of central management or control in the UK, the Channel Islands or the Isle of Man (the so-called "residency test") in order to be subject to the Takeover Code. This residency test brings with it a sense of uncertainty since a company may fall outside the Takeover Code if its directors relocate and it can be very difficult for an outside party (e.g. a possible offeror or investor) to determine whether such a company is subject to the Takeover Code.

¹ The Takeover Code currently applies to companies which have their registered offices in the UK, the Channel Islands or the Isle of Man and whose securities are admitted to trading on a regulated market or a stock exchange in the Channel Islands or Isle of Man. For companies who have their registered offices in those jurisdictions and whose securities are *not* admitted to trading on a regulated market (e.g. if they are listed on AIM), the Takeover Code currently only applies if the company has its place of central management or control in those jurisdictions.

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AIM-listed companies incorporated outside the UK, the Channel Islands or the Isle of Man (e.g. Cayman Islands, Bermuda) will continue to be not subject to the Takeover Code.

Are there are transitional arrangements?

There are no transitional arrangements or any grandfathering regime; relevant companies or transactions which straddle 30 September 2013 will become immediately subject to the Takeover Code. This, for example, could mean that an offer for a company could begin as non-Takeover Code governed and become Code-governed if the offer subsists on 30 September 2013. The Takeover Panel believes that the 30 September implementation date provides sufficient time for companies to sort out any issues arising from these changes but states that it should be consulted in cases of concern prior to the implementation date.

What does this mean for a company newly subject to the Takeover Code from 30 September?

Other than in the form of regulating a takeover offer for the company, the Takeover Code could impact on a company's on-going activities as follows:

- > it may currently have articles of association which replicate Takeover Code provisions which will cease to be relevant or may, in some cases, conflict with the Takeover Code from 30 September;
- > if it has a share buyback programme in place, it may need to seek clearance from the Takeover Panel as well as independent shareholder approval if a shareholder could end up holding 30+% as a result of the buyback;
- > if it has convertible securities in issue, the exercise of them could trigger a mandatory cash offer; and
- > if it conducts a strategic review this could trigger an offer period under the Takeover Code.

To which companies will the Takeover Code apply from 30 September 2013?

Listed companies

The Takeover Code will apply to companies which have their registered offices in the UK, the Channel Islands or the Isle of Man if any of their securities are admitted to trading on:

- > a UK regulated market (e.g. the Main Market or the ISDX Main Board) or any stock exchange in the Channel Islands or the Isle of Man;

- > a UK multilateral trading facility (e.g. AIM or the ISDX Growth Market) (“**MTF**”); or
- > a regulated market in one or more member states of the EEA but not on a UK regulated market (but only on a shared jurisdiction basis i.e. the Takeover Code will only apply to employee information and company law matters)².

The residency test will however continue to apply to a public or private company which has its registered office in the UK, the Channel Islands or the Isle of Man whose securities are not admitted to trading on a public market. This means that the Takeover Code will apply to the following companies only if they are considered by the Takeover Panel to have their place of central management and control in the UK, the Channel Islands or the Isle of Man:

- > a public company whose securities are admitted to trading solely on a public market which is neither a UK or EEA regulated market, nor a UK MTF, nor a stock exchange in the Channel Islands or the Isle of Man;
- > a public company whose securities are not traded on any public market; or
- > a private company (subject to the ten year rule test) (see below).

The Takeover Panel has dropped its initial proposal that the Takeover Code should automatically regulate UK, Channel Islands or Isle of Man registered companies whose securities are admitted to trading solely on an overseas market (but instead has retained the residency test in respect of such companies).

Private companies

The application of the Takeover Code to private companies (with registered offices in the UK, the Channel Islands or the Isle of Man) will also be changed, as follows:

- > by simplifying the 10 year test into a single requirement that the company’s securities have been admitted to trading on a regulated market or a multilateral trading facility in such jurisdictions at any time during the relevant period of 10 years; and
- > by amending the Takeover Code so that it applies to private companies which have actually filed a prospectus for the offer, admission to trading or issue of securities (rather than the current test of whether a prospectus was required).

The Takeover Panel did not think it appropriate to consider whether the 10 year period itself should be reduced in this instance.

² Applies to UK registered companies only (and not companies incorporated in the Channel Islands or the Isle of Man).

Click [here](#) for a table summarising which types of companies will be subject to the Takeover Code.

Click [here](#) for the Takeover Panel paper summarising the changes.

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