**The Takeover Code and the Takeover Panel**

This element provides an introduction to the Takeover Code and the work of the Takeover Panel.

**The Takeover Code**

The Takeover Code is issued by the Panel and lays down the main rules regarding takeovers in the UK.

*“The Code is designed principally to ensure that shareholders in an offeree company are treated fairly and are not denied an opportunity to decide on the merits of a takeover…. The Code also provides an orderly framework within which takeovers are conducted … [and] is designed to promote … the integrity of financial markets. The Code is not concerned with the financial or commercial advantages or disadvantages of a takeover”* (Introduction to the Takeover Code).

It is important to remember that, if either the bidder or the target is a listed company, then the LPDT Rules will also apply to the transaction, in addition to the provisions of the Takeover Code.

**When the Takeover Code applies**

The key determining factors relate to the form and location of the registered office of the offeree company (the target).

The Takeover Code applies to any offer which is made for a company with its registered office in the UK, Channel Islands (‘**CI’**) or Isle of Man (‘**IoM**’) which has its shares admitted to trading on:

* a UK regulated market (e.g. the Main Market);
* a UK MTF# (multilateral trading facility) (e.g. AIM); or
* a stock exchange in the CI or the IoM.

This covers the majority of transactions to which the Takeover Code applies.

\*In the case of a UK unregistered company, the reference to “registered office” shall be read as a reference to the company’s principal office in the UK

#In the case of a company whose securities are or were admitted to trading on a UK MTF, the Code will apply only if the company approved trading, or requested admission to trading, of its securities on the relevant UK MTF.

The Takeover Code also applies to offers for “Other companies” including (a) unlisted public companies which have its registered office in the UK, CI or IOM if any of its securities were admitted to trading on a UK regulated market, UK MTF, or a stock exchange in the CI or IoM at any time during the two years prior to the relevant date.

The “relevant date” is the date on which an announcement is made of an offer or possible offer for the company or on which some other event occurs in relation to the company which has significance under the Code.

As to the transactions to which the Takeover Code relates:

“The Code is concerned with regulating takeover bids and merger transactions of the … companies referred to…above, however effected, including by means of statutory merger or scheme of arrangement…”

(Introduction to the Takeover Code, paragraph 3(b)).

**The Takeover Code on a scheme of arrangement**

Appendix 7 of the Takeover Code addresses the application of the Code to schemes of arrangement.

Paragraph 1 of Appendix 7 states that:

*“The provisions of the Code apply to an offer effected by means of a scheme of arrangement in the same way as they apply to an offer effected by means of a contractual offer, except as set out in this Appendix 7.”*

In addition to the range of specific rules for schemes, paragraph 16 of Appendix 7 sets out details of the Code rules which are disapplied on a scheme.

**Interpreting the Takeover Code**

The Introduction to the Code states that it: “…is based on a number of General Principles which are essentially statements of standards of commercial behaviour... [The General Principles] are applied in accordance with **their spirit** in order to achieve their underlying purpose.” (Introduction to the Takeover Code, paragraph 2(a))

The General Principles are set out immediately after the Introduction to the Code and cover areas including measures to protect the target shareholders, the target and the integrity of the market in the target’s shares.

When interpreting both the General Principles and the Rules, it is important to note that their spirit must be observed as well as their letter. This means that the Panel will interpret both the General Principles and the Rules flexibly. The Code specifically warns that “to take legal or other professional advice on the interpretation, application or effect of the Code is not an appropriate alternative to obtaining a ruling from the Executive”.

The Executive is responsible for the day-to-day operation of the Panel (see later in this element).

**The Takeover Panel’s powers**

As a statutory body under Part 28 CA 2006, the Panel exercises a number of statutory powers in its monitoring of takeover offers and its administration of the Takeover Code:

* the Panel can require parties to produce documents and information (s. 947 CA 2006);
* the Panel has access to the computerised records of the LSE, enabling it easily to monitor share dealings;
* it may also be given information held, for example, by the FCA or a relevant overseas regulator, which would otherwise be strictly controlled by statute;
* the Panel may obtain information from authorised persons (i.e. those authorised by the FCA to carry out investment business, for example banks), as such persons are required by FCA rules to co-operate with the Panel in its investigations;
* the Panel can issue Compliance Rulings to restrain a person from acting in breach of the Takeover Code, or from doing a particular thing, or to secure compliance with the rules;
* it can also make Compensation Rulings for some rule breaches, requiring parties who have breached the Takeover Code to pay compensation to those affected (for example to shareholders or former shareholders in a target company (s.954 CA 2006));
* the Panel may also take disciplinary action against those who breach the Takeover Code (s.952 CA 2006);
* the Panel can also apply to the courts for enforcement under s.955 CA 2006. The court may make such order as it thinks fit in support of the Panel which could lead to proceedings for contempt of court in the case of a continuing breach; and
* the Panel may issue a public or private statement of censure or impose a cold-shouldering order. Cold shouldering effectively bans the sanctioned person from working on Code-regulated transactions for a defined period.

**How the Panel operates**

The Panel operates on a day-to-day basis through its Executive (the “Executive”). The Executive is “staffed by a mixture of employees and secondees from law firms, accountancy firms, corporate brokers, investment banks and other organisations” (see Introduction to the Takeover Code, paragraph 5).

Decisions of the Executive can be appealed to the Hearings Committee, and thereafter to the Takeover Appeal Board in accordance with the procedure set out in the Introduction to the Takeover Code (paragraphs 7 and 8).

In addition to the Rules, the Panel issues Practice Statements and Panel Bulletins providing guidance regarding the Executive’s approach to the Rules. The Panel also provides important guidance in Panel Statements which record its decisions regarding particular transactions. All of these are available from the Panel’s website.

The Code Committee of the Panel also consults from time to time about proposed amendments to the Takeover Code. The Panel Consultation Papers and Response Statements issued in connection with such proposed amendments often provide useful information and guidance with regards to the Panel’s approach to the Rules.

Care has been taken to ensure that the Panel and its procedures (for example as regards appeals) comply with the Human Rights Act 1998, because the Panel is a “public authority” for the purposes of that Act.

More information about the Panel, the Executive, appeals and rulings can be found at [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk).

**Panel resources for advisers**

The Panel’s website incorporates a range of useful resources for advisers including:

Checklists to allow parties to demonstrate Code compliance: <https://www.thetakeoverpanel.org.uk/checklists>

Guidance notes for advisers on key aspects of the Code: <https://www.thetakeoverpanel.org.uk/checklists/notes-to-advisers>

Panel bulletins in relation to key aspects of takeovers: <https://www.thetakeoverpanel.org.uk/communications/panel-bulletins>

**Summary**

* The Takeover Code is issued by the Takeover Panel: it lays down the main rules governing takeovers in the UK.
* The key consideration when determining whether the Code applies is the form and location of registered office of the offeree/target company. The key type of transaction it applies to is an offer for a UK-incorporated listed plc.
* It is important to observe the spirit as well as the rules of the Code.
* The Takeover Code applies to all takeovers, including schemes of arrangement.
* The Takeover Panel has a wide range of statutory powers in relation to the monitoring of takeovers and the administration of the Code under Part 28 CA 2006.
* The Executive operates the Panel on a day-to-day basis. Part of the Executive’s staff is made up of secondees from law firms, investment banks etc.
* The Code Committee consults periodically about proposed amendments to the Code.