

Takeover Code Amendments: Electronic Communications and Information Rights

The Panel on Takeovers and Mergers (the "Panel") published on 30 March an updated version of the City Code on Takeovers and Mergers (the "Code") (together with several amended Practice Statements, giving updated guidance on the application of the Code).

The most substantial changes to the Code relate to the use by an offeror and offeree of electronic communications. The Code now allows parties involved in a bid to send documents required under the Code in hard copy, in electronic form (such as e-mail) or by publication of the documents on a website (although a separate notification of the presence of the documents on the website must be made to the target company's shareholders).

However, all forms to be completed by shareholders (including acceptance forms, withdrawal forms and proxy cards) connected with an offer may only be published in hard copy form. In addition, all documents sent in electronic form or published on a website must state that the recipient has the right to request a copy of such documents in hard copy form; a copy must be sent by the party that published it as soon as possible and, in any event, within two business days of receipt of any such request. Where a shareholder has made an election under the Companies Act 2006 to receive documents in hard form, the same election will apply to documents sent in relation to an offer governed by the Code. The result of this is that the offeror and offeree must prepare and retain a number of hard copies of all documentation to ensure that it is able to comply with its obligations to provide hard copies, even where it is intended that communications are sent or published electronically.

In all cases (including where the offeror and offeree intend to provide documentation only in hard copy), documentation and information sent to shareholders must be published on a website and maintained online during the course of the offer. It will normally be the case that the party will use its own website to publish the required copies; where it does not have a website, or it wishes to use a third party's website, it will be necessary to consult the Panel.

Where a registered shareholder has nominated a person to enjoy "information rights" under the Companies Act 2006 (that is, where a registered shareholder has requested that a copy of information sent to registered shareholders is also sent to a beneficial shareholder), that nominated person has the same right to receive information (including copies of documentation) relating to an offer as does a shareholder.

In addition to these changes relating to electronic communications, the new Code contains various other amendments, including:

- the ability to incorporate certain information in a document required by the Code by reference to other sources of information;
- amendments to Rule 2.2 making clear that the Panel should be consulted where the offeror and/or offeree wish to approach more than a restricted number of people without making an announcement; and
- the incorporation in the Code of changes relating to the Isle of Man, which took effect on 1 March, which include putting the Panel on a statutory footing in relation to its regulation of takeovers of Isle of Man companies.

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