



The Law Society

Takeover Panel consultation paper PCP 2018/2

Law Society and City of London Law
Society joint response

17 December 2018



Introduction

1. The views set out in this paper have been prepared by a Joint Working Party of the Company Law Committees of the City of London Law Society (**CLLS**) and the Law Society of England and Wales (the **Law Society**).
2. The CLLS represents approximately 17,000 City lawyers through individual and corporate membership, including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multijurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees, and membership of its Company law Committee can be found at http://www.citysolicitors.org.uk/index.php?option=com_content&view=category&id=115&Itemid=469.
3. The Law Society is the professional body for solicitors in England and Wales, representing over 170,000 registered legal practitioners. It represents the profession to Parliament, Government and regulatory bodies in both the domestic and European arena and has a public interest in the reform of the law.
4. The Joint Working Party is made up of senior and specialist corporate lawyers from both the CLLS and the Law Society who have a particular focus on issues relating to takeovers.

Response

5. We would like to raise the following points in relation to the PCP.

Shared jurisdiction

6. We note that it is intended that the shared jurisdiction provisions of the Code will fall away immediately upon Brexit. As is, however, acknowledged in paragraph 3.22 of the PCP, the impact of Brexit does not, of itself, require the Panel to delete or otherwise undermine the shared jurisdiction rules currently reflected in the Code and therefore this is essentially a voluntary step on the part of the Code Committee for the reasons set out in the PCP. In light of this, we think it is regrettable that it is not proposed that there should be any “grandfathering” of those companies that are currently subject to the Code’s shared jurisdiction provisions. Although the number of companies involved is relatively small, the impact of removal of the Code’s protection is significant, in particular, for shareholders in companies that will no longer be subject to the Code but whose local regulator will not take jurisdiction over an offer for the relevant company. It is unlikely to be a straightforward matter for an affected company to take appropriate steps to address this situation and the regulatory vacuum created by the Panel ceasing to exercise jurisdiction would not only operate to the disadvantage of target shareholders but would also mean there would not be an orderly framework for the conduct of

an offer for such a company and this would be detrimental to the integrity of the UK financial markets. Such a situation runs counter to the stated purposes of the Code as set out Section 2(a) of the Introduction to the Code.

7. Assuming the Code Committee will not be minded to re-consider the introduction of grandfathering provisions (and in this context we note the Panel has concerns around taking jurisdiction in relation to offers for companies incorporated outside the UK, Channel Islands or Isle of Man although we do not regard these as totally compelling), we would encourage the Panel to liaise with relevant local supervisory authorities with a view to developing some protocols to seek to avoid a total regulatory vacuum arising. In parallel with this, we would suggest that companies that are currently subject to shared jurisdiction should make the change of position clear to their shareholders and indicate what steps (if any) they would propose to take as a consequence – guidance would be useful from the Financial Conduct Authority/Panel/local supervisory authorities in this respect.

Rule 12 and antitrust conditions

8. In the context of the changes being made to the Code in relation specifically to Brexit, we understand the Panel's approach to maintaining the distinction between the treatment of UK/EU antitrust conditions and those related to antitrust approvals in other jurisdictions. However, we think this is something that should be revisited by the Panel as soon as practicable as part of a broader debate about conditionality on takeovers. In our view, the logic for continuing to draw a distinction between the UK/EU and sophisticated antitrust clearance processes elsewhere in the world is increasingly unclear and we would welcome a broader debate on this area. We would not wish our response to be interpreted as agreement with the conclusions reached by the Code Committee on this subject; we are not convinced by the reasoning set out in the PCP.

Definition of "takeover bid" or "bid" in the The Takeovers (Amendment) (EU Exit) Regulations 2019 (the Regulations)

9. We note that the definition of "takeover bid" or "bid" in the Regulations is aligned with the definition in the Takeovers Directive. Again, we understand this approach in the context of initial amendments to address Brexit and the inability to make wider changes at this stage, but we think this is something that the Panel should revisit with the Government given that, in particular, the definition does not technically include takeovers effected by way of scheme of arrangement or where the target is admitted to a UK multilateral trading facility.

FOR FURTHER INFORMATION PLEASE CONTACT:

Name: Chris Pearson
Title: Chair of the Joint Working Party
Email address: chris.pearson@nortonrosefulbright.com
Telephone number: 0207 444 3519

Name: Nick Denys
Title: Policy Adviser
Email address: Nick.Denys@lawsociety.org.uk
Telephone number: 020 7316 5507