

PCP 2024/1 24 April 2024

# **THE TAKEOVER PANEL**

## **COMPANIES TO WHICH THE TAKEOVER CODE APPLIES**

### **PUBLIC CONSULTATION BY THE CODE COMMITTEE**



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## HOW TO RESPOND

The Code Committee of the Takeover Panel (the “**Code Committee**”) invites comments on this Public Consultation Paper (“**PCP**”) by Wednesday, 31 July 2024.

Comments may be sent by email to: [supportgroup@thetakeoverpanel.org.uk](mailto:supportgroup@thetakeoverpanel.org.uk)

Alternatively, please send comments in writing to:

The Secretary to the Code Committee  
The Takeover Panel  
One Angel Court  
London EC2R 7HJ

All responses to formal consultation will be published on the Panel’s website at [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk) unless the respondent requests otherwise. A standard confidentiality statement in an email message will not be regarded as a request for non-disclosure.

## 1. Introduction and summary

### (a) Introduction

1.1 In this PCP, the Code Committee proposes a new jurisdictional framework which would narrow the scope of the companies to which the [Takeover Code](#) (the “Code”) applies under [section 3 of the Introduction to the Code](#) (“**section 3 of the Introduction**”), refocusing the application of the Code on companies which are registered and listed (or were recently listed) in the UK.

1.2 Under the proposals (and subject to the transitional arrangements described below), the Code will apply to a company if, on or after the date on which the amendments are implemented (the “**implementation date**”), the company has its registered office in the UK, the Channel Islands or the Isle of Man (i.e. it is “**UK-registered**”)<sup>1</sup> and either:

- (a) any of the company’s securities<sup>2</sup> are admitted to trading on a UK regulated market (a “**UK RM**”), a UK multilateral trading facility (a “**UK MTF**”), or a stock exchange in the Channel Islands or the Isle of Man (i.e. the company is “**UK-listed**”);<sup>3</sup> or
- (b) the company was UK-listed at any time during the three years prior to the relevant date.<sup>4</sup>

The Code will continue not to apply to a company which has its registered office outside of the UK, the Channel Islands or the Isle of Man.

1.3 Following the implementation of the amendments, the UK-registered companies to which the Code would, subject to the transitional arrangements, no longer apply include:

- (a) a public or private company which was UK-listed more than three years prior to the relevant date;
- (b) a public or private company whose securities are, or were previously, traded solely on an overseas market;

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<sup>1</sup> For ease of reference, this PCP uses the term “**UK-registered**” as opposed to a more accurate term such as “**UK, Channel Islands or Isle of Man-registered**”.

<sup>2</sup> The definition of “[shares or securities](#)” in the Definitions Section of the Code provides that in **sections 3(a)(i) and (ii) of the Introduction** the “securities” referred to are those securities comprised in the company’s equity share capital (whether voting or non-voting) and other transferable securities carrying voting rights.

<sup>3</sup> For ease of reference, this PCP uses the term “**UK-listed**” as opposed to a more accurate term such as “**admitted to trading on UK RM, a UK MTF, or a stock exchange in the Channel Islands or the Isle of Man**”.

<sup>4</sup> For this purpose, the “**relevant date**” is the date on which an announcement is made of a proposed or possible offer for the company or the date on which some other event occurs in relation to the company which has significance under the Code.

- (c) a public or private company whose securities are, or were previously, traded using a “matched bargain facility”;
- (d) any other “unlisted” public company; and
- (e) a private company which filed a prospectus at any time during the 10 years prior to the relevant date,

unless the company had been UK-listed at any time during the three years prior to the relevant date.

- 1.4 In addition, the “**residency test**”, which requires certain companies to have their place of central management and control in the UK, the Channel Islands or the Isle of Man (i.e. to be “**UK-resident**”)<sup>5</sup> in order to be subject to the Code, would be abolished.
- 1.5 If the proposals are adopted, transitional arrangements will apply for a period of three years in relation to companies to which the Code applies immediately prior to the implementation date but which will fall outside the scope of the new regime. This will provide such a “**transition company**” with an opportunity to put in place alternative arrangements such as, for example, making appropriate amendments to its articles of association or enabling shareholders to exit their investment if they do not wish to be shareholders in the company without the protections afforded by the Code.
- 1.6 The proposals are intended to refocus the application of the Code on those companies which might expect to be subject to takeover regulation and to provide clarity and certainty as to the companies which fall within the Panel’s jurisdiction.

**(b) Narrowing the scope of the companies subject to the Code**

*(i) Current position*

- 1.7 Since its establishment, the Panel’s primary focus has been to regulate takeovers of “listed” companies. However, the application of the Code has also extended to certain unlisted companies. For example, the Introduction to the April 1969 edition of the Code stated as follows:

“Although the Code was drafted with quoted public companies particularly in view, the spirit of the Rules and, except where inappropriate, the letter, should be observed where unquoted public companies are concerned. The Rules and their spirit may also be relevant to transactions in the shares of private companies.”.

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<sup>5</sup> For ease of reference, this PCP uses the term “**UK-resident**” as opposed to a more accurate term such as “**UK, Channel Islands or Isle of Man-resident**”.

- 1.8 Under [section 943](#) of the Companies Act 2006 (the “**Act**”),<sup>6</sup> the Panel:
- (a) must make rules for the regulation of takeover bids for companies (as defined in the Act) whose (voting) securities are admitted to trading on a UK RM; and
  - (b) may make rules for the regulation of takeover bids for other companies.
- 1.9 Under **section 3(a) of the Introduction**, the Code applies to the following UK-registered companies:
- (a) companies which are UK-listed (**section 3(a)(i) of the Introduction**);
  - (b) public companies which are not UK-listed (including public companies whose securities are traded solely on an overseas market or using a matched bargain facility) (the first paragraph of **section 3(a)(ii) of the Introduction**); and
  - (c) certain private companies (paragraphs (A) to (D) of **section 3(a)(ii) of the Introduction**), i.e.:
    - (i) companies which were UK-listed at any time during the 10 years prior to the relevant date;
    - (ii) companies in respect of which dealings in securities, and/or prices at which persons were willing to deal in securities, have been published on a regular basis for a continuous period of at least six months in the 10 years prior to the relevant date;
    - (iii) companies whose securities have been subject to a marketing arrangement as described in [section 693\(3\)\(b\)](#) of the Act at any time during the 10 years prior to the relevant date; and
    - (iv) companies which have filed a prospectus at any time during the 10 years prior to the relevant date.
- 1.10 In the case of the companies referred to in paragraphs 1.9(b) and (c), the Code applies only if the company satisfies the residency test.

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<sup>6</sup> Section 943 of the Act has been extended to the [Isle of Man](#). Equivalent provision is also made in Article 3 of the [Companies \(Takeovers and Mergers Panel\) \(Jersey\) Law 2009](#) and section 340B of [The Companies \(Guernsey\) Law, 2008](#).

(ii) *Review of the application of the Code*

- 1.11 As explained above, the Panel has a statutory duty to regulate UK-registered companies whose securities are admitted to trading on a UK RM. For this purpose, the relevant UK RMs are the Main Markets operated by the [London Stock Exchange](#) and [Aquis Stock Exchange](#).
- 1.12 In addition, the Code Committee remains of the view that the Code should continue to apply to companies whose securities are admitted to trading on a UK MTF or on a stock exchange in the Channel Islands or the Isle of Man, and believes that there is widespread support among companies and market participants for this proposition. For this purpose, the relevant UK MTFs are the London Stock Exchange's [AIM](#) market and the [Aquis Growth Market](#) and the stock exchange in the Channel Islands is [The International Stock Exchange](#) ("TISE"). Such companies have chosen to seek the admission to trading of their securities to an exchange-regulated market and the Code Committee considers that those companies, their shareholders, and offerors and other persons who seek to obtain or consolidate control of those companies would have a legitimate expectation that the protections afforded, and the restrictions imposed, by the Code will apply to such companies.
- 1.13 The Code Committee has, however, reviewed whether it is appropriate for the Code to continue to apply to all of the non-UK-listed public and private companies which currently fall, or potentially fall, within the Panel's jurisdiction, including:
- (a) public or private companies whose securities are, or were previously, traded using matched bargain facilities such as [JP Jenkins](#) and [Asset Match](#) (which are not UK MTFs);
  - (b) public or private companies whose securities are, or were previously, traded solely on an overseas market;
  - (c) public companies whose securities are not available to be traded by members of the public; and
  - (d) private companies which have filed a prospectus at any time during the 10 years prior to the relevant date.
- 1.14 In many cases, these companies are not aware that they are subject to the Code and, when they do become aware (in the context of a transaction to which the Code applies), the companies often seek to find a way in which they can cease to be subject to the Code (or in which the transaction can proceed without the provisions of the Code applying, for example, by seeking the Panel's consent to shareholders waiving their rights under the Code).

1.15 In summary, the Code Committee has concluded that it would be appropriate to reduce the regulatory burdens that the requirements of the Code impose on such companies and that the Code should no longer apply to them.

1.16 However, the Code Committee considers that the Code should continue to apply to a company for a limited period of time (i.e. three years) after it ceases to be UK-listed, regardless of whether the company satisfies the residency test.

(iii) *Other markets*

1.17 The Code Committee has also reviewed the application of the Code to companies whose securities or other interests are traded using other platforms, for example:

- (a) a Private Intermittent Securities and Capital Exchange System (a “**PISCES**”);
- (b) a private market, such as [TISE Private Markets](#); or
- (c) a secondary market of a crowdfunding platform, such as the [Seedrs Secondary Market](#).

▪ **PISCES**

1.18 PISCES will be a new platform that will allow securities in private companies to be traded on an intermittent basis as part of the reforms proposed by the government in December 2022 to increase growth and competitiveness in the financial services sector (the “**Edinburgh Reforms**”).<sup>7</sup> Following the announcement of the Edinburgh Reforms, further details of the PISCES proposals were set out in a consultation paper published by HM Treasury in March 2024 (the “**PISCES consultation paper**”).<sup>8</sup> The PISCES consultation paper proposes that PISCES, which will not be categorised as a UK RM, a UK MTF or an organised trading facility (or OTF), will permit the intermittent trading of existing shares in both private companies and public companies whose shares are not admitted to trading on a public market in the UK or abroad. PISCES operators will be permitted to establish a “private perimeter”, whereby detailed company disclosures and pre- and post-trade data are only required to be made available to eligible investors participating on PISCES, and not disseminated publicly.

1.19 The Code Committee recognises that the companies which might seek admission to trading of their securities on a PISCES platform are likely to be growth phase companies

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<sup>7</sup> See <https://www.gov.uk/government/collections/financial-services-the-edinburgh-reforms>

<sup>8</sup> See <https://www.gov.uk/government/consultations/private-intermittent-securities-and-capital-exchange-systems-piscs-consultation>

which would not welcome the regulatory burdens associated with the need to comply with the Code. In addition, such companies are likely to wish to manage a possible change in corporate control by means of mechanisms in their articles of association, such as “drag and tag” rights and dual class share structures, and the application of the Code might deter them from admitting their securities to a PISCES.

1.20 Whilst it is not yet clear whether a company whose securities are admitted to trading on PISCES would fall within paragraph (B) of the current **section 3(a)(ii) of the Introduction**, it will be clear that, under the proposed new regime, the Code would not apply to a company solely by virtue of its securities being admitted to trading on a PISCES, given that PISCES will not be a UK RM or a UK MTF (or a stock exchange in the Channel Islands or the Isle of Man).

- **PRIVATE MARKETS**

1.21 The Code does not apply to a private company by virtue of its securities being traded using a private market if no information in relation to share dealings or share prices is published by that market. The Code Committee considers the Code should continue not to apply to a company by virtue of its securities being traded using such a market, such as TISE Private Markets.

- **CROWDFUNDING PLATFORMS**

1.22 In addition, the Code Committee understands that the Code will not normally apply to a private company by virtue of its “shares” being traded using the secondary market of a crowdfunding platform. In the case of the Seedrs Secondary Market, this is on the basis that the instruments traded are neither shares/securities comprised in the company’s equity share capital nor transferable securities carrying voting rights. The Code Committee considers that the Code should continue not to apply to such a company.

**(c) *Transitional arrangements***

1.23 The Code Committee proposes to introduce transitional arrangements which will apply for three years from the implementation date (the “**transition period**”) in order to ensure that a public company or private company to which the Code currently applies and which is not UK-listed (i.e. a transition company) will have a period of time to adjust to the new regime. All transition companies will cease to be subject to the Code by no later than the end of the three year transition period.

1.24 The transitional arrangements will not be relevant to a UK-registered and UK-listed company which is subject to the Code immediately prior to the implementation date because any such company will continue to be a Code company under the new regime.



**(d) Pre-consultation**

1.25 As part of its review of the companies to which the Code applies, the Code Committee asked the Panel Executive (the “**Executive**”) to undertake an informal pre-consultation on the proposed framework with certain key stakeholders. The Code Committee is grateful to all who participated in the pre-consultation. A list of the pre-consultees is set out in **Appendix A**.

**(e) Structure of this PCP**

1.26 **Section 2** proposes that the scope of the Code should be narrowed as described above.

1.27 **Section 3** explains the proposed transitional arrangements.

1.28 **Section 4** provides an assessment of the impact of the proposals.

1.29 The proposed amendments to the Code are set out in **Appendix B**. Unless otherwise specified, where amendments are proposed, underlining indicates proposed new text and striking-through indicates text that is proposed to be deleted.

1.30 A table summarising the transitional arrangements is set out in **Appendix C**.

1.31 A diagram summarising whether a company is a transition company is set out in **Appendix D** and a diagram summarising whether a transition company is a Code company in respect of a specific transaction is set out in **Appendix E**.

1.32 A list of the questions that are put for consultation is set out in **Appendix F**.

**(f) Invitation to comment**

1.33 The Code Committee invites comments on the amendments to the Code proposed in this PCP. Comments should reach the Code Committee by Wednesday, 31 July 2024 and should be sent in the manner set out at the beginning of this PCP.

**(g) Response Statement, implementation date and transition period**

1.34 The Code Committee intends to publish a Response Statement setting out the final amendments to the Code in Autumn 2024.

1.35 It is expected that the implementation date will be approximately one month after the publication of the Response Statement.

1.36 As indicated above, the proposed transition period is a period of three years from the implementation date.

## 2. Narrowing the scope of the companies subject to the Code

### (a) Introduction

2.1 Section 2 proposes that the scope of the Code should be narrowed so that it would apply to a company only if, on or after the implementation date, the company is UK-registered and either:

- (a) the company is UK-listed; or
- (b) the company was UK-listed at any time during the three years prior to the relevant date.

As is the case in the current **section 3(a)(ii) of the Introduction**, the “**relevant date**” is the date on which an announcement is made of a proposed or possible offer for the company or the date on which some other event occurs in relation to the company which has significance under the Code.

2.2 Subject to the transitional arrangements described in section 3 of this PCP, the Code would therefore no longer apply to a public or private company which neither is UK-listed nor was UK-listed during the three years prior to the relevant date.

2.3 The current requirement for companies which are not UK-listed to satisfy the residency test in order to be subject to the Code would no longer be applicable and the residency test would be abolished at the end of the transition period.

### (b) Companies to which the Code currently applies

#### (i) Introduction

2.4 **Section 3 of the Introduction** sets out the rules as to the companies, transactions and persons to which the Code applies.

2.5 **Section 3(a) of the Introduction** describes the companies to which the Code applies (each a “**Code company**”). There are various tests which must be satisfied in order for a company to be a Code company and in all cases a Code company is required to be UK-registered.

#### (ii) Listed companies

2.6 Under **section 3(a)(i) of the Introduction**, a UK-registered company is a Code company if any of its securities are admitted to trading on any of the following:

- (a) a [UK regulated market](#) as defined in paragraph (13A) of [Article 2\(1\)](#) of Regulation (EU) No 600/2014 on markets in financial instruments (“**UK MiFIR**”). The relevant

UK RMs for this purpose are the London Stock Exchange's Main Market and the Aquis Main Market;<sup>9</sup>

- (b) a **UK multilateral trading facility** as defined in paragraph (14A) of [Article 2\(1\)](#) of UK MiFIR) (provided that the company has approved trading, or requested admission to trading, of its securities on the relevant UK MTF). The relevant UK MTFs for this purpose are the AIM market operated by the London Stock Exchange and the Aquis Growth Market;<sup>10</sup> or
- (c) a **stock exchange in the Channel Islands or the Isle of Man**. The stock exchange for this purpose is TISE.

(iii) *Public companies*

- 2.7 Under the first paragraph of **section 3(a)(ii) of the Introduction**, the Code also applies to a UK-registered public company (other than a UK-listed company falling within **section 3(a)(i)**) which is UK-resident.
- 2.8 The Executive will normally regard the residency test to be satisfied if a majority of the directors of the company are resident in the UK, the Channel Islands or the Isle of Man.<sup>11</sup>
- 2.9 In summary, any UK-registered and UK-resident public company is today a Code company, regardless of whether the company's securities are or are not UK-listed, traded on an overseas market or traded using a matched bargain facility.

(iv) *Private companies*

- 2.10 Under **section 3(a)(ii) of the Introduction**, the Code also applies to a UK-registered private company which is UK-resident, but only if:
  - (a) the company was UK-listed at any time during the 10 years prior to the relevant date (paragraph (A));
  - (b) dealings and/or prices at which persons were willing to deal in any of the company's securities have been published on a regular basis for a continuous period of at least six months in the 10 years prior to the relevant date, whether via a newspaper, electronic price quotation system or otherwise (for example, via a matched bargain facility such as JP Jenkins or Asset Match) (paragraph (B));

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<sup>9</sup> See <https://register.fca.org.uk/s/search?predefined=RM>

<sup>10</sup> See <https://register.fca.org.uk/s/search?predefined=DRSP>

<sup>11</sup> See paragraph 2.8 of [PCP 2012/3](#) (*Companies subject to the Takeover Code*)

- (c) any of the company's securities have been subject to a marketing arrangement as described in section 693(3)(b) of the Act at any time during the 10 years prior to the relevant date (paragraph (C)); or
- (d) the company filed a prospectus for the offer, admission to trading or issue of securities with the registrar of companies or any other relevant authority in the UK, the Channel Islands or the Isle of Man (but in the case of any other such authority only if the filing is on a public record) at any time during the 10 years prior to the relevant date (paragraph (D)).

2.11 The 10 year period during which the Code continues to apply to a private company under any of paragraphs (A) to (D) of **section 3(a)(ii) of the Introduction** is referred to in this PCP as the “**run-off period**”.

**(c) Review and pre-consultation**

2.12 As noted in Section 1, the Code Committee has reviewed the companies to which the Code applies. As part of the review, the Executive has undertaken an informal pre-consultation with certain key stakeholders on the Code Committee's behalf. The key themes identified by the review are summarised below.

*(i) Jurisdictional rules should be clear, certain and objective*

2.13 The Code's current jurisdictional rules are complex and opaque and it is not always clear to market participants, or even to the company itself, whether the Code applies to a company.

2.14 Whilst it can be objectively determined whether a company is UK-listed, and therefore falls within **section 3(a)(i) of the Introduction**, this is not the case in relation to companies which potentially fall within **section 3(a)(ii) of the Introduction**. For example, it is often not possible to ascertain from publicly available information whether, at any point in time, an unlisted public company or a private company to which **section 3(a)(ii) of the Introduction** potentially applies satisfies the residency test. In addition, the application of paragraph (B) of **section 3(a)(ii) of the Introduction** to a private company can rest on subjective judgements as to whether dealings and/or prices have been “*published on a regular basis for a continuous period of at least six months*”.

2.15 The rules which govern the companies to which the Code applies should be clear and certain and should allow companies and market participants to reach an objective determination as to whether a company is or is not a Code company.

2.16 In addition, in the case of paragraph (C) of **section 3(a)(ii) of the Introduction**, the Code Committee considers that the question of whether a company is a Code company should

not rely on the interpretation by the Panel of a statutory provision, i.e. section 693(3)(b) of the Act.

*(ii) The Panel's primary remit is to regulate UK-listed companies*

2.17 The Panel's primary remit is, and should continue to be, to regulate takeover bids, mergers and other transactions which have or may have an effect on the ownership or control of UK-registered companies which have sought admission to trading of their securities to a designated public market in the UK, the Channel Islands or the Isle of Man. This is on the basis that such companies may be expected:

- (a) to have a broad and dispersed ownership base; and
- (b) not to have provisions in their articles of association which address the passing of control of the company.

2.18 The Code Committee understands that many unlisted public companies and private companies which fall within, in particular, paragraph (B) of **section 3(a)(ii) of the Introduction** believe that they and their shareholders can be afforded adequate protection by the implementation of "Code-like" provisions, "drag and tag" rights or other structures into their articles of association and that they do not welcome the costs and regulatory burdens associated with being a Code company.

2.19 In the pre-consultation, representatives of JP Jenkins and Asset Match (which are not categorised as a UK RM or a UK MTF) were of the view that the Code should not apply to a company simply by virtue of the company utilising their facilities.

2.20 As proposed in the PISCES consultation paper, PISCES will operate as a multilateral system but will not be categorised as either a UK RM or a UK MTF. The Code Committee considers that it would not be appropriate or proportionate for pre-listing, growth phase companies whose securities are admitted to trading (intermittently) on a PISCES platform to be subject to the Code. This has been discussed with, among others, HM Treasury, the Department for Business and Trade, and the Financial Conduct Authority as part of the pre-consultation.

*(iii) The Code should not apply to a company solely because its securities are traded on an overseas market*

2.21 The Code currently applies to a UK-registered, UK-resident company which is not UK-listed and whose securities are admitted to trading solely on an overseas market. This is normally because the company will be a public company to which the first paragraph of **section 3(a)(ii) of the Introduction** applies. In the case of a Guernsey-registered, non-UK-listed company whose securities are admitted to trading solely on an

overseas market, the Code will normally apply by virtue of paragraph (B) of **section 3(a)(ii) of the Introduction** (as Guernsey law does not distinguish between public and private companies and the Code will apply to a non-UK-listed Guernsey “limited” company only if any of the criteria in paragraphs (A) to (D) of **section 3(a)(ii) of the Introduction** apply).

2.22 The Code Committee understands that in many cases UK-registered companies whose securities are admitted to trading solely on an overseas market do not wish to be subject to the Code in addition to the regulatory provisions which apply in the jurisdiction of that overseas market. In such cases, the company will usually seek to ensure that a majority of its directors are resident outside the UK, the Channel Islands or the Isle of Man so that the company does not satisfy the residency test.

2.23 As indicated above, the Code Committee considers that the Panel should focus its remit on UK-registered companies which are UK-listed and considers that a company which has applied for its securities to be admitted to trading solely on an overseas market should be subject to the relevant takeover regulation (if any) in the jurisdiction of that overseas market.

*(iv) The Code should continue to apply for a limited period to a company which was previously UK-listed but should not discourage the provision of a matched bargain facility*

2.24 If a UK-registered and UK-listed company cancels the admission to trading of its securities from a UK RM, a UK MTF, or a stock exchange in the Channel Islands or the Isle of Man, the Code will currently continue to apply to the company either:

- (a) if the company continues to be a public company, indefinitely (under **section 3(a)(ii) of the Introduction**); or
- (b) if the company re-registers as a private company, for a run-off period of 10 years (under paragraph (A) of **section 3(a)(ii) of the Introduction**),

in each case, provided that the company satisfies the residency test.

2.25 The Code Committee considers that the Code should continue to apply to a company for a period of time after delisting (but for a shorter period than the current 10 year run-off period). For example, the delisting may have followed a successful takeover offer which a minority did not accept and chose to remain as shareholders in the company. In such circumstances, the continued application of the Code ensures that, for the duration of the run-off period, the new controller will not be able to force out the minority in a manner inconsistent with the [General Principles](#) and rules of the Code.

2.26 The Code Committee believes that the current application of the Code to a company which has ceased to be UK-listed either:

- (a) indefinitely (if the company remains a public company); or
- (b) for run-off period of 10 years (if the company re-registers as a private company),

is disproportionate and considers that all delisted companies should be subject to a shorter run-off period of three years (regardless of whether the company re-registers as a private company).

2.27 In addition, and as indicated above, the Code Committee considers that the Code should not apply to a company solely by virtue of its having sought a matched bargain facility for its shareholders, such as that provided by JP Jenkins and Asset Match. Currently, under paragraph (B) of **section 3(a)(ii) of the Introduction**, the Code applies to a private company whose securities are traded using such a matched bargain facility not only for the period during which that facility is made available but also for a run-off period of 10 years thereafter. The Code Committee is concerned that this could discourage a company which ceases to be UK-listed from seeking to provide a matched bargain facility for its shareholders and believes that any such discouragement should be removed.

**(d) Proposed new regime**

*(i) Summary of proposals*

2.28 For the reasons set out above, the Code Committee has concluded that the scope of the companies to which the Code applies should be narrowed and clarified. It is therefore proposing a new regime under which a UK-registered company would be a Code company only if on or after the implementation date:

- (a) the company is UK-listed; or
- (b) the company was UK-listed at any time during the three years prior to the relevant date (regardless of whether it satisfies the residency test).

2.29 In summary:

- (a) a UK-listed company which falls within the **current section 3(a)(i) of the Introduction** immediately prior to the implementation date would continue to be a Code company under the proposed **new section 3(a)(i) of the Introduction** for so long as it remains UK-listed;
- (b) a UK-listed company which falls within the **current section 3(a)(i) of the Introduction** immediately prior to the implementation date and which ceases to

be UK-listed on or after the implementation date would continue to be a Code company under the proposed **new section 3(a)(ii) of the Introduction** for a run-off period of three years from the date of delisting;

- (c) a public or private company which falls with the **current section 3(a)(ii) of the Introduction** immediately prior to the implementation date would be subject to the transitional arrangements in the proposed **new section 3(a)(iii) of the Introduction**; and
- (d) the residency test which currently applies to non-UK-listed companies which fall within **section 3(a)(ii) of the Introduction** would be abolished (although companies subject to the transitional arrangements in the proposed **new section 3(a)(iii) of the Introduction** would continue to be subject to the residency test until the end of the transition period).

(ii) *Impact of the proposals*

2.30 If the new regime is introduced then, following the implementation date and subject to the transitional arrangements, the Code will no longer apply to the following companies:

- (a) a public or private company which was UK-listed more than three years prior to the relevant date;
- (b) a public or private company whose securities are, or were previously, traded solely on an overseas market;
- (c) a public or private company whose securities are, or were previously, traded using a matched bargain facility such as JP Jenkins or Asset Match;
- (d) any other “unlisted” public company; and
- (e) a private company which filed a prospectus at any time during the 10 years prior to the relevant date,

unless the company had been UK-listed at any time during the three years prior to the relevant date.

2.31 In addition, it will be clear that the Code does not apply to a non-UK-listed company whose securities or other interests are traded solely using other platforms, for example:

- (a) a PISCES;
- (b) a private market, such as TISE Private Markets; or
- (c) a secondary market of a crowdfunding platform, such as Seedrs or Crowdcube.



2.32 In order to assess the effect that the proposals are likely to have on the number of offers which the Panel regulates, the Code Committee has reviewed:

- (a) the number of non-UK-listed Code companies in respect of which an “offer period” commenced in the period between April 2017 (the earliest date from which accurate data is available) and March 2024; and
- (b) whether those companies had been UK-listed at any time during the three years prior to the relevant date.

2.33 Of the 33 companies identified, 7 would have been Code companies if the proposed regime had been in place at the time of the offer period and 26 would not. Of those 26 companies:

- (a) 5 were public companies whose securities were, at the time of the offer period, admitted to trading solely on an overseas market;
- (b) 2 were public companies whose securities had been traded solely on an overseas market in the three years prior to the offer period;
- (c) 10 were public or private companies which had ceased to be UK-listed more than three years prior to the offer period; and
- (d) 9 were unlisted public companies which had not previously been UK-listed or admitted to trading on an overseas market.

2.34 In summary, if the proposed regime had been in place in the period between April 2017 and March 2024, during which period the average number of companies in offer periods per year was 76, the Panel would have regulated an average of approximately 4 fewer offer periods per year.

**(e) *Statutory companies, chartered companies and UK Societas***

2.35 **Section 3(a)(i)** and **section 3(a)(ii) of the Introduction** each states that the companies to which the Code applies include “*where appropriate, statutory and chartered companies and UK Societas*”.

2.36 In summary:

- (a) a statutory company or a chartered company is a company which is created by, respectively, an act of parliament or a Royal Charter, as opposed to being incorporated under the Act; and

- (b) a UK Societas is a European public limited liability company (or Societas Europaea or SE) which was converted into a UK Societas on 1 January 2021 as a result of the UK's withdrawal from the EU.

2.37 As far as the Code Committee is aware, no statutory company, chartered company or UK Societas is currently UK-listed. In addition, it is not now possible to form a new UK Societas. It is therefore very unlikely that a statutory company, a chartered company or a UK Societas would be a Code company under the proposed regime and the Code Committee considers that it is unnecessary for such companies to be specifically referred to in **section 3(a) of the Introduction**. Even if the references to such companies are deleted, however, a statutory company, a chartered company or a UK Societas will nonetheless be a Code company under the proposed regime if such a company is UK-listed.

**(f) Companies with a sole beneficial owner**

2.38 In certain circumstances, a company may strictly fall within **section 3(a)(ii) of the Introduction** but only have a sole beneficial owner. For example, the company may be a public company established by a single individual, a wholly-owned subsidiary of its parent company, or a company 100% of the shares in which have been acquired by an offeror under an offer to which the Code applied.

2.39 In any case where a company which falls within **section 3(a)(ii) of the Introduction** has a sole beneficial owner, it is the Panel's longstanding practice not to seek to apply the Code to the company, on the basis that there are no minority shareholders to whom the Panel might be required to afford protection. This practice applies if, for example, a company has two shareholders, one of whom holds its shares as bare trustee for the other.

2.40 The Executive is frequently consulted as to the application of the Code to companies with a sole beneficial owner, given that the fact that the Panel does not seek to regulate offers for such companies is not set out in the Code. The Code Committee agrees that it is not appropriate to apply the Code to such companies and proposes to codify the existing practice in **section 3(a) of the Introduction**. If the proposals are adopted, the Code will only apply to a non-UK-listed public company if it was UK-listed any time during the three years prior to the relevant date and the question of the application of the Code to a company with a sole beneficial owner is therefore likely to arise less frequently.

**(g) Ability to waive the application of the Code**

2.41 The final paragraph of **section 3(a)(ii) of the Introduction** provides the Panel with the ability to "*apply the Code with a degree of flexibility in suitable cases*" where this is

appropriate in the context of a statutory, chartered or private company to which the Code applies. This is in addition to the Panel's ability to derogate or grant a waiver to a person from the application of a rule in certain circumstances, as set out in [section 2\(c\) of the Introduction](#).

- 2.42 In addition, the Executive has established a procedure pursuant to which it will agree not to apply the Code to a particular transaction where a Code company has very few (generally ten or fewer) shareholders and it would be inappropriate or unduly onerous to apply the Code (a "**Code waiver**"). A Code waiver will only be granted by the Executive if certain safeguards are observed, including written confirmations being received from each of the shareholders in the Code company that their rights under the Code have been explained to them and that they consent to the Code being disapplied in respect of the transaction in question. A pro forma Code waiver letter is available on the Panel's [website](#).
- 2.43 Under the proposed regime, there may continue to be circumstances in which it is inappropriate to apply the Code in full to a particular company and the Code Committee considers that the ability to apply the Code with a "degree of flexibility" should not be limited to statutory, chartered and private companies.
- 2.44 The Code Committee considers that the default position under the proposed regime (subject to the granting of any specific derogation or waiver under **section 2(c) of the Introduction**) should be that the Code applies in full to a Code company which is UK-listed. However, there may be circumstances in which it is inappropriate or unduly onerous to apply the Code in full to a company which is no longer UK-listed and which has entered its three year run-off period but where it is not possible or practical to obtain a Code waiver.
- 2.45 In the light of the above, the Code Committee proposes to introduce into **section 3(a) of the Introduction** an ability for the Panel to grant a waiver from the application of some or all of the provisions of the Code in respect of a company which is not UK-listed.

**(h) Re-registrations and delistings**

*(i) Re-registration of a public company as a private company*

- 2.46 **Section 3(e) of the Introduction** sets out the Panel's expectation that, if a public company re-registers as a private company and, as a result, the company will cease to be a Code company, the company should make an appropriate disclosure to its shareholders about the implications of the loss of the protections afforded by the Code.
- 2.47 Under the proposed regime, there will no longer be circumstances in which the re-registration of a public company as a private company will, of itself, result in the Code

ceasing to apply. This is because the Code will apply to any company which was UK-listed at any time during the three years prior to the relevant date, regardless of whether it is a public company or a private company. The Code Committee therefore proposes to delete the current **section 3(e) of the Introduction**.

(ii) *Delistings*

2.48 The Code Committee considers that, where a UK-listed company decides that it wishes to cancel the admission of its securities to trading on a UK RM, a UK MTF, or a stock exchange in the Channel Islands or the Isle of Man, the company should make an appropriate disclosure to its shareholders about the fact that, as a result of the delisting, the company will enter a three year run-off period, following which the Code will cease to apply. This will be the case even if the company's securities will instead be admitted to trading on an overseas market.

2.49 The Code Committee therefore proposes to introduce a **new section 3(e) of the Introduction** to this effect.

(i) ***Proposed amendments to the Code***

(i) *Section 3(a) of the Introduction*

2.50 In the light of the above, the Code Committee proposes to amend **section 3(a) of the Introduction** to provide as follows:

**“3 COMPANIES, TRANSACTIONS AND PERSONS SUBJECT TO THE CODE**

...

**(a) Companies**

(i) *Listed companies*

The Code applies to any company which has its registered office\* in the United Kingdom, the Channel Islands or the Isle of Man if any of its securities are admitted to trading on a UK regulated market, a UK MTF#, or a stock exchange in the Channel Islands or the Isle of Man.

(ii) *Recently listed companies*

The Code also applies to any company (not falling within paragraph (i) above or paragraph (iii) below) which has its registered office\* in the United Kingdom, the Channel Islands or the Isle of Man if any of its securities were admitted to trading on a UK regulated market, a UK MTF#, or a stock exchange in the Channel Islands or the Isle of Man at any time during the three 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.

*(iii) Transition companies<sup>12</sup>*

During the transition period only, the Code applies to a transition company (not being a company falling within paragraph (i) above) if, on the relevant date, the Code would apply to an offer for the company under paragraph (ii) of former section 3(a) of the Introduction (as if paragraph (ii) of former section 3(a) of the Introduction had remained in force on 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.

See the Transitional Appendix for the definitions of “former section 3(a) of the Introduction”, “transition company” and “transition period”.

*(iv) Waivers*

Where appropriate, the Panel may grant a waiver from the application of some or all of the provisions of the Code in respect of a company referred to in paragraph (ii) or paragraph (iii) above.

*(v) Companies to which the Code does not apply*

The Code does not apply to an open-ended investment company or to a company with a sole beneficial owner.

*\*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.”.*

2.51 The proposed amendments to **section 3(a) of the Introduction** are set out in **Appendix B**.

- Q1. Should the scope of the Code be narrowed to apply only to a company which is “UK-listed” or which was “UK-listed” at any time during the three years prior to the relevant date?**
- Q2. Do you agree that the “run-off” period for a company which ceases to be UK-listed should be three years?**
- Q3. Should the Panel have the ability, where appropriate, to grant a waiver from the application of some or all of the provisions of the Code in respect of a company which has ceased to be “UK-listed”?**
- Q4. Do you have any comments on the proposed new section 3(a) of the Introduction?**

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<sup>12</sup> See Section 3 below

(ii) *Section 3(e) of the Introduction*

2.52 The Code Committee proposes to delete the current **section 3(e) of the Introduction** (*Re-registration of a public company as a private company*) and to introduce a **new section 3(e) of the Introduction**, as follows:

**“(e) Cancellation of admission to trading**

A company referred to in paragraph (i) of section 3(a) above may decide that it wishes to cancel the admission of its securities to trading on a UK regulated market, a UK MTF, or a stock exchange in the Channel Islands or the Isle of Man. In such circumstances, early consultation with the Panel is advised so that guidance can be given on the appropriate disclosure to be made to shareholders about the fact that, as a result of the cancellation of the admission of its securities to trading, the company will fall within paragraph (ii) of section 3(a) above for a period of three years, following which the Code will cease to apply.”.

**Q5. Should the new section 3(e) of the Introduction with regard to the cancellation of admission to trading be introduced as proposed?**

(iii) *Minor and consequential amendments*

2.53 The Code Committee proposes to make minor and consequential amendments to:

- (a) **section 3(b) of the Introduction;**
- (b) **section 3(f) of the Introduction;**
- (c) the Note on the definition of **“reverse takeover”** in the Definitions Section of the Code; and
- (d) the definitions of **“shares or securities”**, **“UK multilateral trading facility”** and **“UK regulated market”** in the Definitions Section of the Code,

as set out in **Appendix B**.

**Q6. Do you have any comments on the minor and consequential amendments?**

### 3. Transitional arrangements

#### (a) Introduction

- 3.1 Section 3 explains the transitional arrangements which it is proposed will apply for three years from the implementation of the amendments in order to ensure that a company to which the **current section 3(a)(ii) of the Introduction** applies (or potentially applies)<sup>13</sup> immediately prior to the implementation date (i.e. a public company which is not UK-listed or private company to which one of paragraphs (A) to (D) applies) will have a period of time to adjust to the new regime. Such a company will be a “**transition company**” to which the **new section 3(a)(iii) of the Introduction** (and the new **Transitional Appendix**) will apply.
- 3.2 In summary, a company will be a transition company if it is either:
- (a) a company to which the **current section 3(a)(ii) of the Introduction** applies immediately prior to the implementation date; or
  - (b) a company to which the **current section 3(a)(ii) of the Introduction** would apply immediately prior to the implementation date but for the fact that it does not satisfy the residency test at that time.
- 3.3 A company will only be subject to the **new section 3(a)(ii) of the Introduction** as a company which was UK-listed at any time during the three years prior to the relevant date<sup>14</sup> if it ceases to be UK-listed on or after the implementation date.
- 3.4 The operation of the proposed transitional arrangements is summarised in the table set out in **Appendix C**.
- 3.5 The diagram set out in **Appendix D** summarises whether a company will be a transition company on the implementation date and the diagram set out in **Appendix E** summarises whether a transition company will be a Code company in respect of a specific transaction.

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<sup>13</sup> A reference in this Section 3 to a company being a company to which the Code “potentially” applies during the transition period refers to the residency test, which will continue to apply to a transition company on the relevant date. As explained in Section 2, the **current section 3(a)(ii) of the Introduction** provides that the Code applies to a company only if, at the time in question, the company is UK-resident. Therefore, for example, while a non-UK-listed public company which is not UK-resident will not be a Code company for so long as it does not satisfy the residency test, it will nonetheless be a company to which the Code potentially applies, and to which the Code will apply if the company satisfies the residency test on the relevant date.

<sup>14</sup> i.e. the date on which an announcement is made of a proposed or possible offer for the company or on which some other event occurs in relation to the company which has significance under the Code

**(b) Summary of transitional arrangements**

3.6 If the **new section 3(a) of the Introduction** were to be adopted without transitional arrangements being put in place then, on the implementation date:

- (a) a UK-listed company which today falls within the **current section 3(a)(i) of the Introduction** would fall within the **new section 3(a)(i) of the Introduction**; and
- (b) a non-UK-listed company which today falls within the **current section 3(a)(ii) of the Introduction** would only fall within the **new section 3(a)(ii) of the Introduction** if the company had been UK-listed at any time during the three years prior to the relevant date.

3.7 The Code Committee considers that a company which falls within the **current section 3(a)(ii) of the Introduction** should not cease to be a Code company on the implementation date as a result of the introduction of the new regime without the company and its shareholders having the opportunity to put in place alternative arrangements. For example, such a transition company may wish to:

- (a) make itself subject to the jurisdiction of the Panel or an alternative regulator of takeovers (for example, by admitting the company's securities to trading on an appropriate market);
- (b) propose to shareholders that it should amend its articles of association so as to introduce provisions equivalent to certain aspects of the Code, most obviously a requirement for a shareholder who obtains or consolidates control of the company to make a mandatory offer on similar terms to an offer required under [Rule 9](#); or
- (c) make arrangements for shareholders to exit their investment if they do not wish to be shareholders in the company without the protections afforded by the Code.

3.8 The Code Committee therefore intends to put in place transitional arrangements whereby, if the Code applies (or potentially applies) to a company by virtue of the **current section 3(a)(ii) of the Introduction** immediately prior to the implementation date, the Code will continue to apply (or potentially to apply) to that transition company on the same basis for a period of three years from the implementation date. At the end of the transition period, the Code will cease to apply (or potentially apply) to a transition company.

3.9 It is proposed to implement the transitional arrangements by means of a **new section 3(a)(iii) of the Introduction** and a new **Transitional Appendix**.



**(c) Principles**

3.10 The principles behind the transitional arrangements are summarised below.

*(i) UK-listed companies will not be subject to the transitional arrangements*

3.11 A UK-registered company which is UK-listed on the implementation date will be a Code company under the **new section 3(a)(i) of the Introduction** (both during and after the transition period). The transitional arrangements will therefore not apply to such a company.

*(ii) Transition companies will be Code companies under the transitional arrangements (and not under the new regime)*

3.12 A company which, immediately prior to the implementation date, is (or potentially is) a Code company under the **current section 3(a)(ii) of the Introduction** (i.e. a non-UK-listed public company or private company to which one of paragraphs (A) to (D) applies) will, by definition, not be UK-listed. Such a company will be a transition company (and will not fall within the **new section 3(a)(i) of the Introduction**).

3.13 During the transition period, a transition company will not fall within the **new section 3(a)(ii) of the Introduction**, even if it was UK-listed at any time during the three years prior to the relevant date. A company will only fall within the **new section 3(a)(ii) of the Introduction** by virtue of being a company which was UK-listed at any time during the three year period prior to the relevant date if it was UK-listed on or after the implementation date.

3.14 During the transition period, a transition company will be subject to the transitional arrangements under the **new section 3(a)(iii) of the Introduction** and the new **Transitional Appendix**.

*(iii) The residency test will continue to apply to transition companies*

3.15 During the transition period, the residency test will continue to apply to a transition company in the same way as it does today. Regardless of whether a transition company satisfies the residency test on the implementation date, the Code will apply to a transition company on the relevant date only if it satisfies the residency test at that time.

**(d) UK-listed companies**

3.16 As indicated above, the Code applies to a UK-registered company which is UK-listed under the **current section 3(a)(i) of the Introduction** and will continue to apply to such a company under the **new section 3(a)(i) of the Introduction**. Accordingly, no

transitional arrangements will be required for a UK-registered company which is UK-listed on the implementation date.

- 3.17 If the securities of such a UK-listed company cease to be admitted to trading on a UK RM, a UK MTF, or a stock exchange in the Channel Islands or the Isle of Man during the transition period, the company will continue to be a Code company for a three year run-off period under the **new section 3(a)(ii) of the Introduction**. This will be the case regardless of whether the company then re-registers as a private company, ceases to be UK-resident or seeks admission to trading of its securities on an overseas market.

**(e) Non-UK-listed companies**

*(i) Public companies*

- 3.18 During the transition period, the Code will apply to a public company which was (or potentially was) a Code company immediately prior to the implementation date by virtue of the **current section 3(a)(ii) of the Introduction**, but only if that transition company satisfies the residency test on the relevant date.

*(ii) Private companies*

- 3.19 During the transition period, the Code will apply to a private company which was (or potentially was) a Code company immediately prior to the implementation date by virtue of the **current section 3(a)(ii) of the Introduction**:

- (a) only if that transition company satisfies the residency test on the relevant date; and
- (b) only until the expiry of any 10 year run-off period under paragraphs (A) to (D) of **section 3(a)(ii) of the Introduction** if that occurs during the course of the transition period.

- 3.20 If, for example, eight years prior to the relevant date, a public company had delisted from the London Stock Exchange's Main Market and re-registered as a private company, and satisfied the residency test on the relevant date, the company would be a Code company under paragraph (A) of the **current section 3(a)(ii) of the Introduction** as a UK-resident private company which had been UK-listed within the previous 10 years. Under the proposed transitional arrangements, the Code will apply to such a transition company during the transition period (provided that the company satisfies the residency test on the relevant date) but only until the expiry of its 10 year run-off period.

**(f) When the Code ceases to apply to a transition company**

3.21 The time at which it is proposed that a transition company will cease to be a Code company (or a potential Code company) is summarised below.

*(i) Non-UK-listed PLCs or LTDs which delisted less than three years prior to the implementation date*

3.22 Where a transition company is:

- (a) a non-UK-listed public company which was UK-listed on a date less than three years prior to the implementation date (and which, as a public company, falls within the first paragraph of the **current section 3(a)(ii) of the Introduction** and will remain a Code company under paragraph (A) of the **current section 3(a)(ii) of the Introduction** even if it re-registers as a private company); or
- (b) a private company which was UK-listed on a date less than three years prior to the implementation date (and therefore falls within paragraph (A) of the **current section 3(a)(ii) of the Introduction**),

it is proposed that the company will cease to be a Code company at the end of the transition period.

3.23 As the transition period will last for three years, it will not be possible for a transition company to fall within the **new section 3(a)(ii) of the Introduction** after the end of the transition period.

*(ii) Other companies*

3.24 Where a transition company is:

- (a) either (i) a non-UK-listed public company which was UK-listed between three and 10 years prior to the implementation date, or (ii) a private company which was UK-listed between three and 10 years prior to the implementation date;
- (b) a public company which has never been UK-listed; or
- (c) a private company which is in a 10 year run-off period under paragraphs (B) to (D) of the **current section 3(a)(ii) of the Introduction**,

it is proposed that the company will cease to be a Code company at the end of the transition period or, where a private company's run-off period will expire before the end of the transition period, at the end of that run-off period.

3.25 In addition, if a transition company which is a non-UK-listed public company re-registers as a private company during the transition period and if none of paragraphs (A) to (D) of the **current section 3(a)(ii) of the Introduction** will then apply then, as is the case today, the company will cease to be a Code company.

**(g) Proposed amendments to the Code**

3.26 The Code Committee proposes to implement the transitional arrangements described above by introducing:

(a) the proposed new **section 3(a)(iii) of the Introduction**, as follows:

“(iii) Transition companies

During the transition period only, the Code applies to a transition company (not being a company falling within paragraph (i) above) if, on the relevant date, the Code would apply to an offer for the company under paragraph (ii) of former section 3(a) of the Introduction (as if paragraph (ii) of former section 3(a) of the Introduction had remained in force on 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.

For the definitions of “former section 3(a) of the Introduction”, “transition company” and “transition period”, see the Transitional Appendix.”; and

(b) the new **Transitional Appendix**, as set out in **Appendix B**.

3.27 The proposed **section 3(a)(iii) of the Introduction** and the **Transitional Appendix** would cease to have effect on the third anniversary of the implementation date. These provisions would therefore be deleted from the Code (and any consequential amendments made) at that time without further consultation.

**Q8. Should the transitional arrangements be introduced as proposed?**

**Q9. Do you agree that the length of the transitional period should be three years?**

**Q10. Do you have any comments on the proposed new section 3(a)(iii) of the Introduction or the new Transitional Appendix?**

#### **4. Assessment of the impact of the proposals**

##### **(a) *Narrowing the scope of the companies subject to the Code***

4.1 Narrowing the scope of the companies to which the Code applies to UK-registered companies which are currently UK-listed, or which were UK-listed at any time during the three years prior to the relevant date, as proposed in Section 2 of the PCP, has a number of benefits, including those summarised below.

4.2 The proposed new jurisdictional regime would:

- (a) provide clarity and certainty as to the companies which fall within the Panel's jurisdiction, enabling companies, shareholders and other market participants to determine objectively whether a particular company is, or is not, a Code company;
- (b) retain the Panel's jurisdiction over the companies which have historically been the primary focus of takeover regulation in the UK, i.e. UK, Channel Islands and Isle of Man registered companies whose securities are admitted to trading on a UK RM, a UK MTF or a stock exchange in the Channel Islands or the Isle of Man or were recently so admitted;
- (c) reduce the length of the run-off period for which the Code will continue to apply to a company after it ceases to be UK-listed from 10 years to three years, which the Code Committee considers to be a more appropriate period of time during which the company should continue to be subject to the Code;
- (d) abolish the residency test, which both relies on the application of subjective judgements as to whether a majority of a company's directors are resident in the UK, the Channel Islands or the Isle of Man and also can result in a company either becoming or ceasing to be subject to the Code simply as a result of a change in the composition of the members of the board;
- (e) remove the burdens of complying with the provisions of the Code from various companies where those companies and their shareholders would not necessarily expect the company to be subject to takeover regulation, in particular, unlisted public companies and private companies whose shares are traded using a matched bargain facility such as JP Jenkins and Asset Match (and which were not UK-listed at any time during the three years prior to the relevant date). In addition, the fact that the Code would no longer apply to a company by virtue of dealings and/or prices being published on a matched bargain facility may encourage more companies to use such a facility subsequent to the delisting of their securities; and

- (f) make clear that the Code does not apply to a company solely by virtue of its securities or other instruments being traded on other platforms, such as TISE Private Markets, the Seedrs Secondary Market or, in the future, a PISCES. There does not appear to be any expectation from such companies or their shareholders that the Code should apply or that the interests of shareholders in such companies cannot be adequately protected by means of provisions in the company's articles of association.
- 4.3 The Code Committee notes that, as a result of the application of the residency test, a UK-registered, non-UK-listed company (including a company whose securities are admitted to trading solely on an overseas market) can, in effect, choose whether or not to be a Code company by ensuring that a majority of the company's directors either are or are not resident in the UK, the Channel Islands or the Isle of Man. This will no longer be the case as the Code will no longer apply to a company whose securities are admitted to trading solely on an overseas market (other than where the company was UK-listed at any time during the three years prior to the relevant date). The Code Committee considers this to be an appropriate outcome of the amendments.
- 4.4 In one limited respect, the proposed amendments would result in a widening of the scope of the companies to which the Code applies. This is because a UK-registered company which was UK-listed at any time during the three years prior to the relevant date will in the future be a Code company regardless of whether it satisfies the residency test, whereas the Code will only apply to such a company today if it is UK-resident. The Code Committee considers that it is appropriate and proportionate for such a company to remain subject to the Code for a limited period of three years after delisting, even if it does not satisfy the residency test.
- 4.5 As indicated in Section 2, the introduction of the new regime is not likely to have a material effect on the number of transactions which the Panel regulates. For example, the number of companies in offer periods in the period from April 2017 to March 2024 would have been reduced from an average of 76 per year to an average of approximately 72 if the proposed amendments had been in force at that time.
- 4.6 The Code Committee recognises that removing certain companies from the Panel's ambit will give rise to the risk that such companies may in the future undergo a change in control in circumstances where the principles, standards and orderly framework which underpin the Code do not apply and, in particular, where shareholders may not be afforded fair and equivalent treatment or are denied an opportunity to decide on the merits of a takeover. However, as indicated above, the new regime will provide clarity and certainty as to whether or not the Code applies to a particular company.

**(b) Transitional arrangements**

- 4.7 Section 3 of the PCP describes the transitional arrangements that will apply in relation to companies to which the Code will apply (or potentially apply) immediately prior to the implementation date but which will not be subject to the Code under the new regime.
- 4.8 Whilst many transition companies may welcome the clarity that they will not be subject to the Code at the end of the three year transition period, the transitional arrangements will ensure that transition companies, and their shareholders, have the opportunity to make alternative arrangements if they so wish, such as:
- (a) the company ensuring that it will remain subject to appropriate takeover regulation;
  - (b) the company seeking the approval of shareholders to the introduction of “Code-like” provisions into the company’s articles of association; or
  - (c) shareholders exiting their investment in the company prior to the Code ceasing to apply.
- 4.9 The Code Committee acknowledges that there would be costs attached to companies and their shareholders making such alternative arrangements during the transition period but believes that these costs would not be disproportionate to the overall benefits of the new regime.

**APPENDIX A****List of pre-consultees**

1. Aquis Exchange plc
2. Asset Match Limited
3. City of London Corporation
4. Crowdcube Limited
5. Department for Business and Trade
6. Family Business UK
7. Financial Conduct Authority
8. Government of Jersey, Department for the Economy
9. Guernsey Financial Services Commission
10. HM Treasury
11. Institute of Chartered Accountants in England and Wales
12. Isle of Man Central Registry
13. Joint Working Party of the Company Law Committees of the City of London Law Society and the Law Society of England and Wales
14. JP Jenkins
15. London Stock Exchange Group plc
16. Quoted Companies Alliance
17. Seedrs Limited
18. States of Guernsey, Finance Sector Development
19. The International Stock Exchange Group Limited
20. The Investment Association
21. UK Finance
22. UK Individual Shareholders Society (ShareSoc)
23. UK Shareholders' Association



## APPENDIX B

### Proposed amendments to the Code

#### INTRODUCTION

#### 3 COMPANIES, TRANSACTIONS AND PERSONS SUBJECT TO THE CODE

This section (except for sections 3(d) and (e)) sets out the rules as to the companies, transactions and persons to which the Code applies.

##### (a) Companies

~~(i) UK, Channel Islands and Isle of Man registered and traded companies~~

(i) Listed companies

The Code applies to ~~all offers for companies (including, where appropriate, statutory and chartered companies and UK Societas) any company~~ any company which ~~have their~~ has its registered ~~offices~~ office\* in the United Kingdom, the Channel Islands or the Isle of Man if any of ~~their~~ its securities are admitted to trading on a UK regulated market, ~~or a UK multilateral trading facility MTF#<sub>1</sub>, or on any a~~ stock exchange in the Channel Islands or the Isle of Man.

~~(ii) Other companies~~

(ii) Recently listed companies

The Code also applies to ~~all offers any company (not falling within paragraph (i) above or paragraph (iii) below) for public and private companies (and, where appropriate, statutory and chartered companies and UK Societas) which have their~~ any company (not falling within paragraph (i) above or paragraph (iii) below) for public and private companies which ~~have their~~ has its registered ~~offices~~ office\* in the United Kingdom, the Channel Islands or the Isle of Man and which ~~are considered by the Panel to have their place of central management and control in the United Kingdom, the Channel Islands or the Isle of Man, but in relation to private companies only when:~~

- ~~(A) if any of their~~ its securities ~~have been~~ were admitted to trading on a UK regulated market, ~~or a UK multilateral trading facility MTF#<sub>1</sub>, or on any a~~ stock exchange in the Channel Islands or the Isle of Man at any time during the ~~40~~ three years prior to the relevant date; ~~or~~
- ~~(B) dealings and/or prices at which persons were willing to deal in any of their securities have been published on a regular basis for a continuous period of at least six months in the 10 years prior to the relevant date, whether via a newspaper, electronic price quotation system or otherwise; or~~
- ~~(C) any of their securities have been subject to a marketing arrangement as described in section 693(3)(b) of the Act at any time during the 10 years prior to the relevant date; or~~
- ~~(D) they have filed a prospectus for the offer, admission to trading or issue of securities with the registrar of companies or any other relevant authority in the United Kingdom, the Channel Islands or the Isle of Man (but in the case of any other such authority only if the filing is on a public record) at any time during the 10 years prior to the relevant date.~~

~~In each case, t~~The “relevant date” is the date on which an announcement is made of a ~~proposed an offer~~ or possible offer for the company or ~~the date~~ on which some other event occurs in relation to the company which has significance under the Code.

(iii) Transition companies

During the transition period only, the Code applies to a transition company (not being a company falling within paragraph (i) above) if, on the relevant date, the Code would apply to an offer for the company under paragraph (ii) of former section 3(a) of the Introduction (as if paragraph (ii) of former section 3(a) of the Introduction had remained in force on 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.

See the Transitional Appendix for the definitions of “former section 3(a) of the Introduction”, “transition company” and “transition period”.

(iv) Waivers

Where appropriate, †the Panel appreciates that may grant a waiver from the application of some or all of the provisions of the Code may not be appropriate to all statutory and chartered companies in respect of a company referred to in paragraphs (i) and (ii) or paragraph (iii) above or to all private companies falling within the categories listed in paragraph (ii) above and may accordingly apply the Code with a degree of flexibility in suitable cases.

(iiiiv) ~~Open ended investment companies~~ Companies to which the Code does not apply

The Code does not apply to ~~offers for an open-ended investment companies~~ company or to a company with a sole beneficial owner.

*\*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 ~~have been were~~ admitted to trading on a UK multilateral trading facility MTF, ~~paragraph (i) the Code will apply, and criterion (A) of paragraph (ii) will be satisfied,~~ only if the company ~~has approved trading, or requested admission to trading, of its securities on the relevant UK multilateral trading facility MTF.~~*

*†~~With respect to either a company having its registered office in the Isle of Man and which is incorporated there under the Companies Act 2006 (an Act of Tynwald), or a company having its registered office in Guernsey, the company will be treated as being subject to the Code only when any of the criteria in (A) to (D) of paragraph (ii) apply.~~*

**(b) Transactions**

The Code is concerned with regulating takeover bids and merger transactions of the ~~relevant companies~~ referred to in section 3(a) above, however effected, including by means of statutory merger or scheme of arrangement (as defined in the Definitions Section). The Code is also concerned with regulating other transactions (including offers by a parent company for shares in its subsidiary, dual holding company transactions, new share issues, share capital reorganisations and offers to minority shareholders) which have as their objective or potential effect (directly or indirectly) obtaining or consolidating control of the relevant companies, as well as partial offers (including tender offers pursuant to Appendix 5) to shareholders for securities in the relevant companies.

The Code also applies to unitisation proposals which are in competition with another transaction to which the Code applies.

...

**(e) — Re-registration of a public company as a private company**

~~A public company incorporated in the United Kingdom, the Channel Islands or the Isle of Man may decide to re-register as a private company as a result of which, pursuant to section 3(a) above, the Code may no longer apply to it. If the Code would no longer apply in such circumstances and the relevant company has more than one shareholder, early consultation with the Panel is advised before it re-registers as a private company so that guidance can be given by the Panel on the appropriate disclosure to be made to its shareholders about the implications of the loss of Code protection.~~

**(e) Cancellation of admission to trading**

A company referred to in paragraph (i) of section 3(a) above may decide that it wishes to cancel the admission of its securities to trading on a UK regulated market, a UK MTF, or a stock exchange in the Channel Islands or the Isle of Man. In such circumstances, early consultation with the Panel is advised so that guidance can be given on the appropriate disclosure to be made to shareholders about the fact that, as a result of the cancellation of the admission of its securities to trading, the company will fall within paragraph (ii) of section 3(a) above for a period of three years, following which the Code will cease to apply.

**(f) Code responsibilities and obligations**

In addition to the companies referred to in section 3(a) above, tThe Code applies to a range of persons who participate in, or are connected with, or who in any way seek to influence, intervene in, or benefit from, takeovers or other matters to which the Code applies.

## DEFINITIONS

### Reverse takeover

...

### **NOTE ON REVERSE TAKEOVER**

The definition is of relevance only in circumstances where the offeror is a company that falls within section 3(a)(i) ~~or (ii)~~ of the Introduction.

...

### Shares or securities

...

~~(2) In paragraphs section 3(a)(i) and (ii) of the Introduction, and in the first paragraph of section 3(b) of the Introduction and former section 3(a) of the Introduction (as defined in the Transitional Appendix), the shares/securities referred to are only those shares/securities comprised in the company's equity share capital (whether voting or non-voting) and other transferable securities carrying voting rights.~~

...

**UK multilateral trading facility or UK MTF**

UK multilateral trading facility or UK MTF has the meaning given in paragraph (14A) of Article 2(1) of the UK version of Regulation (EU) No 600/2014 on markets in financial instruments (as amended by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018).

**UK regulated market**

UK regulated market has the meaning given in paragraph (13A) of Article 2(1) of the UK version of Regulation (EU) No 600/2014 on markets in financial instruments (as amended by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018).

**TRANSITIONAL APPENDIX****TRANSITIONAL APPENDIX****DEFINITIONS****Former section 3(a) of the Introduction**

Section 3(a) of the Introduction to the Code as in force on the day immediately prior to the implementation date, as set out in Section 2 below.

**Implementation date**

*[implementation date to be inserted]*

**Transition company**

Either:

(a) a company to which paragraph (ii) of former section 3(a) of the Introduction applied immediately prior to the implementation date; or

(b) a company to which paragraph (ii) of former section 3(a) of the Introduction would have applied immediately prior to the implementation date but for the fact that its place of central management and control was not in the United Kingdom, the Channel Islands or the Isle of Man at that time.

**Transition period**

The period starting on the implementation date and ending at 11.59 pm on the day immediately prior to the third anniversary of the implementation date.

**1 APPLICATION OF THE CODE TO TRANSITION COMPANIES**

**Under paragraph (iii) of section 3(a) of the Introduction, during the transition period only, the Code applies to a transition company (which does not fall within paragraph (i) of section 3(a) of the Introduction) if, on the relevant date, the Code would apply to an offer for the company under paragraph (ii) of former section 3(a) of the Introduction (as if paragraph (ii) of former section 3(a) of the Introduction had remained in force on the relevant date).**

## 2 FORMER SECTION 3(a) OF THE INTRODUCTION

Immediately prior to the implementation date, former section 3(a) of the Introduction provided as follows:

### “3 COMPANIES, TRANSACTIONS AND PERSONS SUBJECT TO THE CODE

...

#### (a) Companies

##### (i) UK, Channel Islands and Isle of Man registered and traded companies

The Code applies to all offers for companies (including, where appropriate, statutory and chartered companies and UK Societas) which have their registered offices\* in the United Kingdom, the Channel Islands or the Isle of Man if any of their securities are admitted to trading on a UK regulated market or a UK multilateral trading facility# or on any stock exchange in the Channel Islands or the Isle of Man.

##### (ii) Other companies

The Code also applies to all offers (not falling within paragraph (i) above) for public and private companies† (and, where appropriate, statutory and chartered companies and UK Societas) which have their registered offices\* in the United Kingdom, the Channel Islands or the Isle of Man and which are considered by the Panel to have their place of central management and control in the United Kingdom, the Channel Islands or the Isle of Man, but in relation to private companies only when:

- (A) any of their securities have been admitted to trading on a UK regulated market or a UK multilateral trading facility# or on any stock exchange in the Channel Islands or the Isle of Man at any time during the 10 years prior to the relevant date; or
- (B) dealings and/or prices at which persons were willing to deal in any of their securities have been published on a regular basis for a continuous period of at least six months in the 10 years prior to the relevant date, whether via a newspaper, electronic price quotation system or otherwise; or
- (C) any of their securities have been subject to a marketing arrangement as described in section 693(3)(b) of the Act at any time during the 10 years prior to the relevant date; or
- (D) they have filed a prospectus for the offer, admission to trading or issue of securities with the registrar of companies or any other relevant authority in the United Kingdom, the Channel Islands or the Isle of Man (but in the case of any other such authority only if the filing is on a public record) at any time during the 10 years prior to the relevant date.

In each case, the relevant date is the date on which an announcement is made of a proposed or possible offer for the company or the date on which some other event occurs in relation to the company which has significance under the Code.

The Panel appreciates that the provisions of the Code may not be appropriate to all statutory and chartered companies referred to in paragraphs (i) and (ii) above or to all private companies falling within the categories listed in paragraph (ii) above and may accordingly apply the Code with a degree of flexibility in suitable cases.

(iii) Open-ended investment companies

The Code does not apply to offers for open-ended investment companies.

\*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 have been admitted to trading on a UK multilateral trading facility, paragraph (i) will apply, and criterion (A) of paragraph (ii) will be satisfied, only if the company has approved trading, or requested admission to trading, of its securities on the relevant UK multilateral trading facility.

†With respect to either a company having its registered office in the Isle of Man and which is incorporated there under the Companies Act 2006 (an Act of Tynwald), or a company having its registered office in Guernsey, the company will be treated as being subject to the Code only when any of the criteria in (A) to (D) of paragraph (ii) apply.”.

### **3 RE-REGISTRATION OF A PUBLIC COMPANY AS A PRIVATE COMPANY**

**If a transition company which is a public company decides to re-register as a private company during the transition period and, as a result of the re-registration, the Code would no longer apply to the company, early consultation with the Panel is advised so that guidance can be given on the appropriate disclosure to be made to the company’s shareholders.**

## APPENDIX C

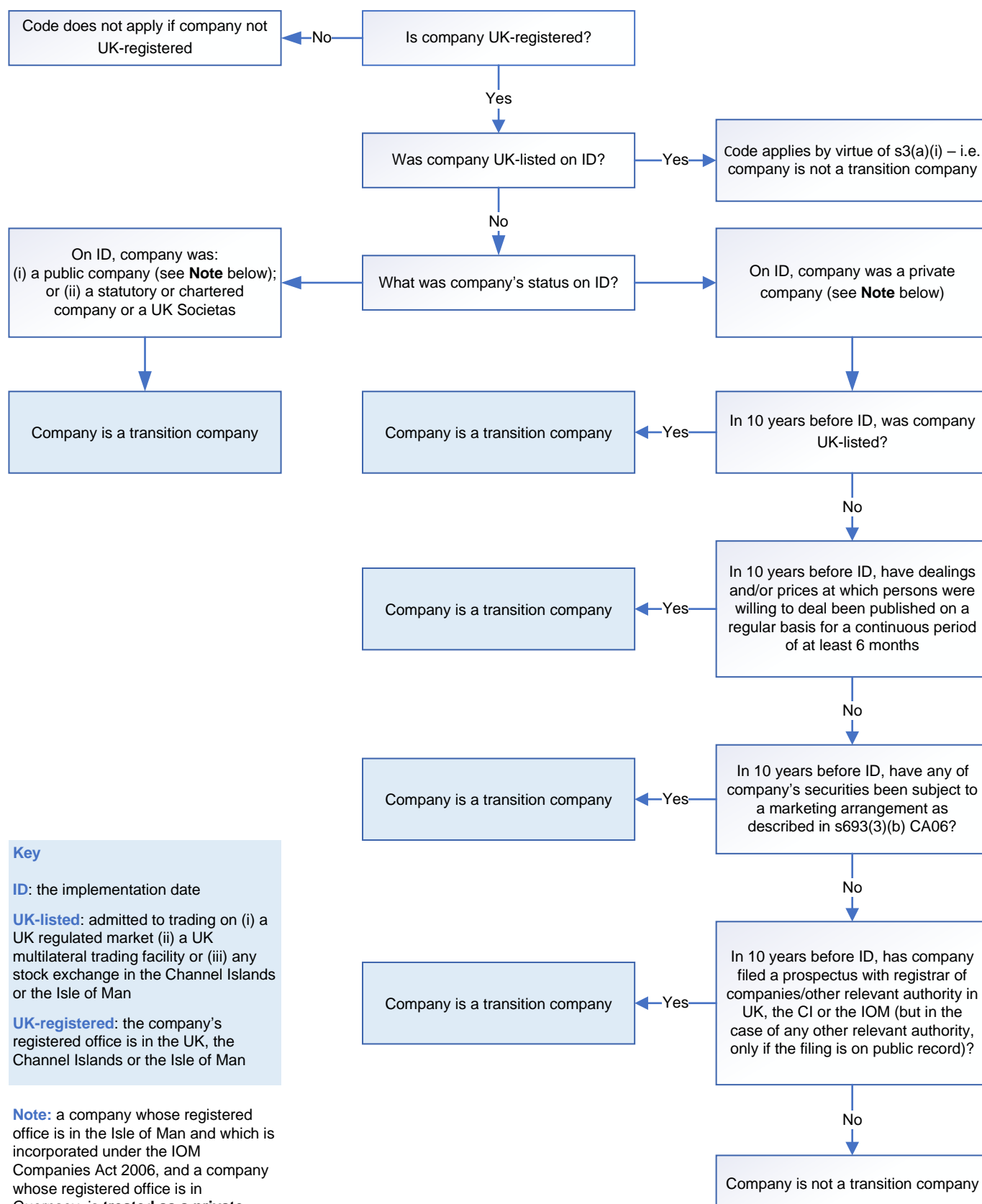
Table summarising transitional arrangements

	PRE-IMPLEMENTATION DATE ("ID")		TRANSITION PERIOD ("TP")			POST-TP	
	STATUS	CODE COMPANY	CODE COMPANY FROM ID	CHANGE DURING TP	CODE COMPANY POST CHANGE	STATUS	CODE COMPANY
1.	UK-listed	Yes Old s.3(a)(i)	Yes New s.3(a)(i)	None	Yes New s.3(a)(i)	UK-listed	Yes New s.3(a)(i)
2.	UK-listed	As 1 above	As 1 above	Delists	Yes For 3 years from delisting New s.3(a)(ii)	UK-listed < 3 years prior	Yes For 3 years from delisting New s.3(a)(ii)
3.	Non-UK-listed PLC/LTD Delisted < 3 years prior to ID UK-resident	Yes Old s.3(a)(ii) (PLC)/ s.3(a)(ii)(A) (LTD)	Yes Transitional s.3(a)(iii)	None	Yes Transitional s.3(a)(iii)	Delisted > 3 years prior	No Not UK-listed currently or > 3 years prior
4.	As 3 above	As 3 above	As 3 above	No longer UK-resident	No Not UK-resident	As 3 above	As 3 above
5.	Non-UK-listed PLC/LTD Delisted < 3 years prior to ID Not UK-resident	No Not UK-resident	No Not UK-resident	None	No Not UK-resident	Delisted > 3 years prior	No Not UK-listed currently or > 3 years prior
6.	As 5 above	As 5 above	As 5 above	Becomes UK-resident	Yes Transitional s.3(a)(iii)	As 5 above	As 5 above
7.	(a) Non-UK-listed PLC/LTD Delisted 3-10 years prior to ID (b) Other non-UK-listed PLC E.g. never UK-listed (c) Unlisted LTD In 10 year run-off UK-resident	Yes Old s.3(a)(ii) (PLC)/ s.3(a)(ii)(A)-(D) (LTD)	Yes Transitional s.3(a)(iii) Until earlier of end of (i) TP and (ii) 10 year run-off	None	Yes Transitional s.3(a)(iii) Until earlier of end of (i) TP and (ii) 10 year run-off	Delisted > 3 years prior/ Never UK-listed	No Not UK-listed currently or > 3 years prior
8.	As 7 above	As 7 above	As 7 above	No longer UK-resident	No Not UK-resident	As 7 above	As 7 above
9.	(a) Non-UK-listed PLC/LTD Delisted 3-10 years prior to ID (b) Other non-UK-listed PLC E.g. never UK-listed (c) Unlisted LTD In 10 year run-off Not UK-resident	No Not UK-resident	No Not UK-resident	None	No Not UK-resident	Delisted > 3 years prior/ Never UK-listed	No Not UK-listed currently or > 3 years prior
10.	As 9 above	As 9 above	As 9 above	Becomes UK-resident	Yes Transitional s.3(a)(iii) Until earlier of end of (i) TP and (ii) 10 year run-off	As 9 above	As 9 above

## APPENDIX D

### WHETHER A COMPANY IS A TRANSITION COMPANY

Whether a company is a **transition company** is determined as at the implementation date

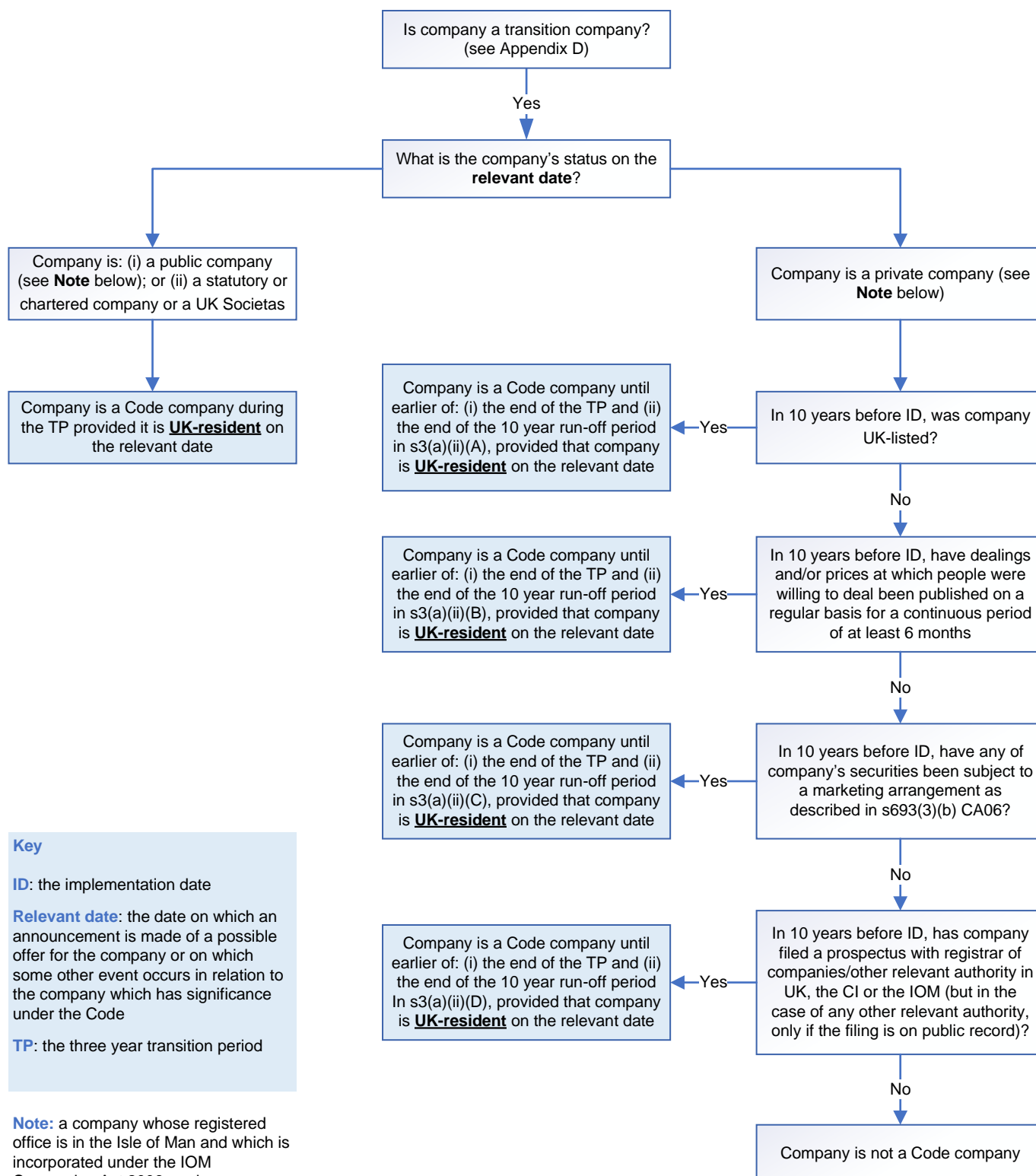




## APPENDIX E

### WHETHER A TRANSITION COMPANY IS A CODE COMPANY IN RESPECT OF A SPECIFIC TRANSACTION

Whether a **transition company** is a Code company in respect of a specific transaction will be determined on the relevant date



#### Key

**ID:** the implementation date

**Relevant date:** the date on which an announcement is made of a possible offer for the company or on which some other event occurs in relation to the company which has significance under the Code

**TP:** the three year transition period

**Note:** a company whose registered office is in the Isle of Man and which is incorporated under the IOM Companies Act 2006, and a company whose registered office is in Guernsey, is **treated as a private company** (and not as a public company) for these purposes

**APPENDIX F****List of questions**

- Q1. Should the scope of the Code be narrowed to apply only to a company which is “UK-listed” or which was “UK-listed” at any time during the three years prior to the relevant date?**
- Q2. Do you agree that the “run-off” period for a company which ceases to be UK-listed should be three years?**
- Q3. Should the Panel have the ability, where appropriate, to grant a waiver from the application of some or all of the provisions of the Code in respect of a company which has ceased to be “UK-listed”?**
- Q4. Do you have any comments on the proposed new section 3(a) of the Introduction?**
- Q5. Should the new section 3(e) of the Introduction with regard to the cancellation of admission to trading be introduced as proposed?**
- Q6. Do you have any comments on the minor and consequential amendments?**
- Q7. Should the transitional arrangements be introduced as proposed?**
- Q8. Do you agree that the length of the transitional period should be three years?**
- Q9. Do you have any comments on the proposed new section 3(a)(iii) of the Introduction or the new Transitional Appendix?**