A Guide to Takeovers in the United Kingdom

SLAUGHTER AND MAY

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1. Contents

1. Introduction

This memorandum is a general guide to takeovers of UK incorporated and listed companies subject to The City Code on Takeovers and Mergers (the "City Code"). It first describes the UK bodies which regulate takeovers of such companies and then summarises the more important legislation and rules under which they do so.

This memorandum deals primarily with UK legislation and rules. However, regulations in other jurisdictions may be relevant to a takeover of a UK incorporated and listed company; for example, when that company has overseas listings or assets.

This memorandum should not be relied on in place of detailed advice about any specific transaction.

2. The Regulatory Bodies

Takeovers in the UK are regulated by a number of different authorities deriving powers from several sources.

2.1 The Panel on Takeovers and Mergers

The Panel on Takeovers and Mergers (the "Panel") is the body which regulates takeovers of companies subject to the City Code.

2.2 Government Departments

Government departments and other regulatory bodies may become involved in a takeover. Examples are the Financial Services Authority (the "FSA") which is the UK's single, statutory, financial services regulator and administers financial services and parts of companies legislation; the Office of Fair Trading (the "OFT"); and the Competition Commission, in the exercise of anti-trust type functions under the Enterprise Act 2002 (the "Enterprise Act").

2.3 European Commission

In certain cases, described in section 3.5 below, the European Commission has exclusive jurisdiction to review competition issues, since the UK is a member of the European Union (the "EU").

2.4 Other Regulatory Consents

Other regulatory consents may be required for particular takeovers: for example, takeovers involving companies in industries such as water, gas, electricity, telecommunications, newspaper, television, radio, postal services and financial services.

3. The Legislation and Rules

The following is a summary of the principal legislation and rules under which takeovers of UK incorporated and listed companies are regulated.

3.1 The City Code

The City Code is made and administered by the Panel, which has been designated as the supervisory authority to carry out certain regulatory functions pursuant to the Directive on Takeover Bids (2004/25/EC) (the "Takeover Directive"). The rules of the City Code have statutory force in the UK and the Panel has statutory powers in respect of all offers and other transactions to which the City Code applies.

The City Code outlines the conduct to be observed in takeover and merger transactions and dual holding company transactions. It applies, broadly speaking, to all companies and Societas Europaea (and, where appropriate, statutory and chartered companies) which have their registered offices in the UK, the Channel Islands or the Isle of Man if any of their securities are admitted to trading on a regulated market in the UK or on any stock exchange in the Channel Islands or the Isle of Man, as well as to offers for public companies (such as AIM-listed companies) which do not have securities traded on a regulated market (and certain private companies), but which are considered by the Panel to be resident in the UK, the Channel Islands or the Isle of Man. (The City Code can only apply to certain types of private company, primarily where the equity share capital of a private company has, at any time during the ten years prior to the offer, been to some degree publicly held.) In all cases the status or residence of the offeror is immaterial.

There are detailed rules relating to shared jurisdiction with the relevant supervisory authority of another member state of the European Economic Area ("EEA"), the detailed consideration of which falls outside the scope of this memorandum, which apply, for example, where a company has its registered office in the UK, but its securities are admitted to trading not on a regulated market in the UK, but on a regulated market in one or more member states of the EEA, or where a company has its registered office in another member state of the EEA, but its securities are admitted to trading only on a regulated market in the UK.

The City Code comprises six general principles and 38 rules (as well as numerous notes which aid the interpretation of the rules). Its underlying objective can be summed up in three underlying principles:-

- all shareholders of the same class in a target company must be treated equally and must have adequate information so that they can reach a properly informed decision;
- a false market must not be created in the securities of the offeror or the target company; and
- the management of the target company must not take any action which would frustrate an offer without the consent of its shareholders.

The 38 rules, which form the bulk of the City Code, are effectively expansions of the general principles and contain provisions governing specific aspects of a takeover. Both the spirit as well as the precise wording of the City Code are required to be observed.

The Panel is not concerned with the financial or commercial advantages or disadvantages of a takeover, which the Panel regards as matters for the company and its shareholders.

See Appendix 1 and Appendix 2 to this memorandum for further details of the General Principles and certain key rules of the City Code.

3.2 The Listing Rules and Prospectus Legislation

If the consideration being provided by the offeror is in the form of shares, or a combination of cash and shares, a prospectus is likely to be required. An FSA approved prospectus must be made publicly available in relation to any offer of transferable securities to the public (more than 100 people) in the UK and/or an admission to trading of such securities on a regulated market (which includes the Official List but not AIM).

There are a number of exemptions from the general requirement to produce a prospectus. In relation to takeovers involving a securities exchange offer and mergers, a prospectus is not required if a document is made available which the FSA regards as containing information equivalent to that required in a prospectus. The FSA has indicated that it will apply a full vetting process to equivalent documents.

An offeror will need to take a number of factors into account when considering whether to issue a prospectus or an equivalent document. It is likely to opt for a prospectus where it wants to take advantage of the 'passporting' arrangements provided for by the Prospectus Directive which allow a prospectus produced within one member state to be used throughout the EU without additional approvals or information (except for a translation of the summary information) being required. These arrangements do not apply to an equivalent document.

An additional point is that an offeror who chooses a prospectus must publish a supplementary prospectus if there are significant new developments while the offer remains outstanding or, if the securities are admitted to trading, before admission. The Prospectus Directive allows withdrawal rights to investors for two days after a supplementary prospectus is published. This right is difficult to reconcile with the existing scheme of takeover regulation under the City Code and the Panel has indicated that withdrawal rights cannot arise once the securities offered have been unconditionally allotted.

In the case of a cash offer with a loan note alternative, consideration must be given as to whether the loan notes will be treated as transferable securities for the purposes of the Prospectus Directive, requiring publication of a prospectus or equivalent document. It is common practice for there to be a restricted transfer loan note or a non-transferable loan note as a means of dealing with this issue.

Companies wanting to make a securities exchange offer in the UK will also consider whether to effect a takeover by scheme of arrangement (see section 4) which, amongst other advantages, is generally thought to avoid the Prospectus Directive insofar as it does not constitute an offer to the public. However, a prospectus will still be required for the purposes of admission to trading unless the securities being issued do not amount to 10 per cent. or more of a class already admitted to trading.

In relation to the Listing Rules, where the offeror is a listed company, the offeror may, depending on the 'class' of transaction within which the takeover transaction falls, have to make an announcement or send an appropriate circular to shareholders and obtain their prior approval. The Listing Rules classify transactions (including certain types of indemnity) by assessing the size of the target relative to that of the offeror on the basis of a number of different tests and impose more onerous obligations the bigger the size

of the transaction; for example where a test shows that the size of the target company is 25 per cent. or more of the offeror, the prior approval of the offeror's shareholders will be needed.

3.3 Companies Legislation

The three main statutes, for the purposes of this memorandum, are the Financial Services and Markets Act 2000, the Criminal Justice Act 1993 and the Companies Act 2006. Further details of the relevant sections of these statutes are set out in the Appendices to this memorandum.

3.4 UK Competition Legislation

The Enterprise Act came into force on 20 June, 2003 and replaced most of the merger provisions of the Fair Trading Act 1973.

The OFT (see section 2.2) may initiate investigations of takeovers if there is a merger situation qualifying for investigation (other than those which fall to be reviewed by the European Commission as described in section 3.5 below). The OFT will be under a duty to refer a takeover to the Competition Commission if it believes that a relevant merger has been created and this has resulted or may be expected to result in a substantial lessening of competition.

In general terms, a merger qualifies for investigation if it produces the situation that two or more formerly distinct enterprises (at least one of which must be carried on in the UK or under the control of a company incorporated in the UK) cease to be distinct and:-

A. the merging enterprises both supply goods or services of a particular description and as a result of the merger a 25 per cent. share of that supply of goods or services is created or enhanced in the UK as a whole or in a substantial part of it; or

B. the value of the UK turnover of the enterprise proposed to be taken over exceeds £70 million per annum.

As regards coming under "common control", three degrees of control are recognised: a controlling interest; ability to control commercial policy; and ability to materially influence commercial policy. There are no precise criteria for assessing whether an enterprise can materially influence or control the policy of another; the OFT will form a view on a case by case basis.

There is no statutory obligation to notify the OFT of a proposed takeover which qualifies for reference, but in practice many qualifying takeovers are notified. There are three basic methods of seeking clearance and the OFT has published guidelines describing the information which it will normally need in order to process a case expeditiously. These methods are:

A. Written Submission – normally the offeror will submit to the OFT a paper explaining the nature of the transaction, the economic market and the likely effect on competition. The OFT aims to process written submissions within 40 days of receipt; or

B. Informal Advice – where no announcement has been made it may be possible in limited circumstances to obtain informal advice from the OFT as to whether it is likely to refer the matter to the Competition Commission. This process can take a number of weeks; or

C. Merger Notice – where an acquisition is a matter of public record and has not been completed, the pre-merger notification procedure can be used. This sets running a statutory timetable (up to a maximum of 30 working days) within which the OFT must decide whether to refer the merger to the Competition Commission. The takeover cannot be completed during this 30-day period.

Unless a qualifying takeover is cleared by the OFT, there is a risk (except where it has been dealt with under the statutory demerger justification procedure) that it will be referred to the Competition Commission at any time within four months of the transaction becoming public.

The OFT is able to seek and enforce undertakings from the parties to a takeover in lieu of a reference to the Competition Commission. It can, for example, consider requiring undertakings to divest which may take the form of a share sale, a sale of business or an asset disposal. It may, less frequently, require behavioural undertakings.

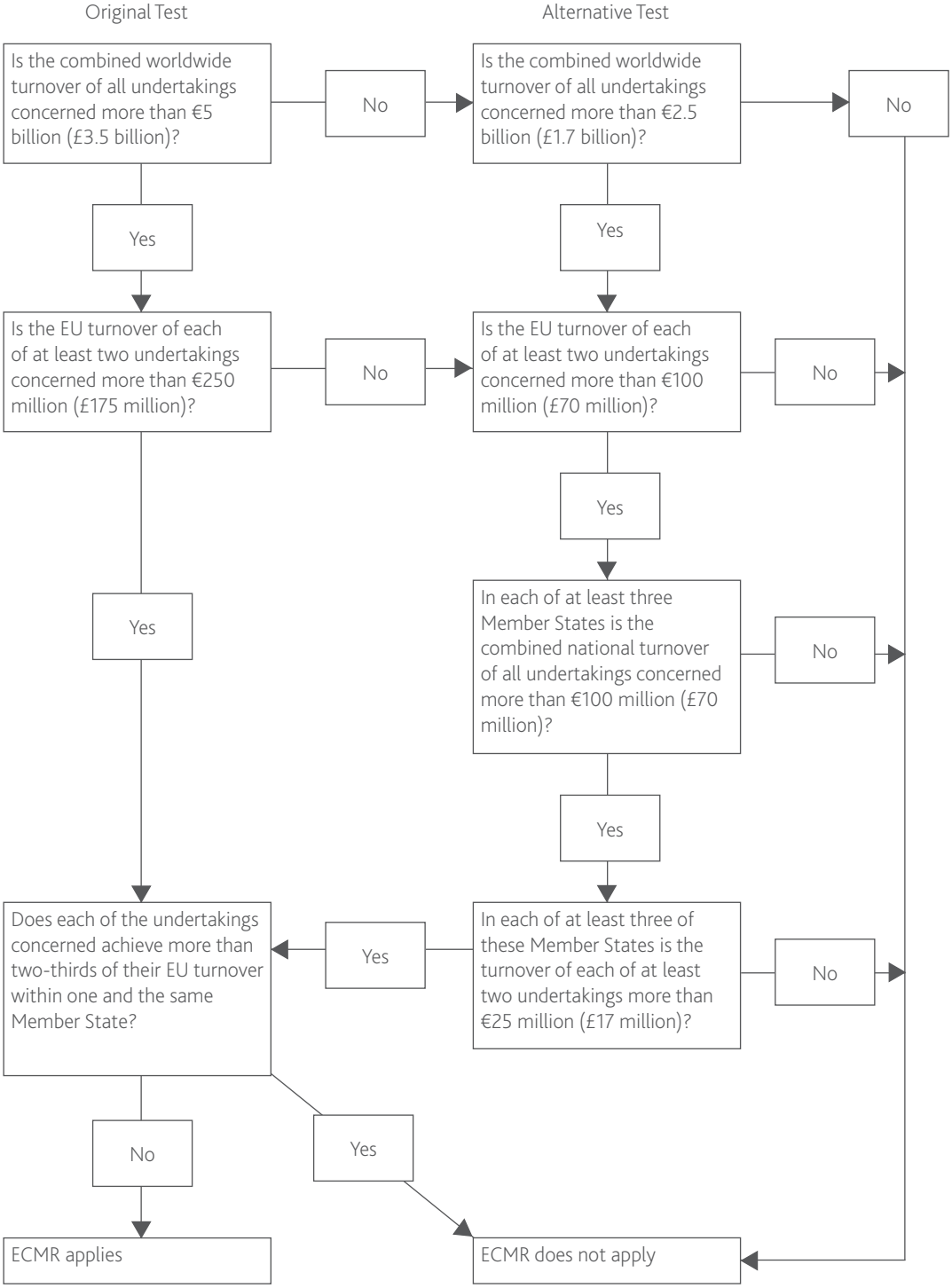
The OFT may refer a takeover to the Competition Commission either after consummation of a takeover or in anticipation of a takeover. Once a takeover has been referred to it, the Competition Commission considers whether the takeover may be expected to result in a substantial lessening of competition. It may impose 'hold separate undertakings' for the duration of its inquiry to ensure the two businesses are not integrated. Once the Competition Commission has finished its inquiry, its report is published. Except in a very limited number of cases where the Secretary of State retains decision-making powers, the Competition Commission will make the final decision whether to clear the takeover, prohibit it or approve it subject to remedies (in the form of undertakings given by the parties or by adopting an order to similar effect). If the takeover has already taken place the Competition Commission has wide powers to require divestment of a particular pool of assets or part(s) of the business or to prohibit it completely and require the parties to unwind the transaction.

If a takeover offer is capable of being referred to the Competition Commission, Rule 12.1(a) of the City Code requires that it must be a term of the offer that it will lapse if it is referred to the Competition Commission before the first closing date or the date when the offer becomes or is declared unconditional as to acceptances, whichever is the later. In the case of an offer being implemented by way of a scheme of arrangement (see section 4) which is capable of being referred to the Competition Commission, Rule 12.1(a) requires that it must be a term of the offer that the offer will lapse and the Scheme will not become effective if it is referred to the Competition Commission before the shareholder meetings.

3.5 EU Competition Rules

The European Commission has exclusive jurisdiction under the EC Merger Regulation ("ECMR"), which came into force on 1 May, 2004, to review competition issues and related matters arising out of takeovers which are "concentrations with a Community dimension". Such takeovers are not generally subject to review by the competition authorities of the UK or any other EEA state. Whether a takeover (which is a concentration) will have a "Community dimension" depends on whether it satisfies a number of turnover thresholds, which are shown on the chart overleaf. It should be noted that the ECMR can apply to transactions with little or no EU connection.

EC Merger Regulation (ECMR) Thresholds



The European Commission has an initial 25 working day period from the date of notification in which to come to a decision. This period can be extended to 35 working days if the parties submit binding commitments to resolve identified competition issues. After the expiry of this period the Commission must decide whether to clear the takeover or to commence an extended investigation (for a further period of four months).

In the case of any takeover offer which would if implemented fall within the relevant criteria for the jurisdiction of the European Commission to apply, Rule 12.1(b) of the City Code requires that it must be a term of the offer that it will lapse if before the first closing date or the date when the offer is declared unconditional as to acceptances, whichever is the later, the European Commission either decides to initiate a full four-month investigation or, following a referral by the European Commission to a competent authority in the United Kingdom, there is a subsequent reference to the Competition Commission. In the case of an offer being implemented by way of a scheme of arrangement, the equivalent term required by Rule 12.1(b) is that the offer will lapse and the scheme will not become effective if there is such an investigation or such a referral and subsequent reference to the Competition Commission.

A concentration may, in an exceptional case, be referred back to the UK competition authorities. In such cases a reference may be made to the Competition Commission.

Takeovers which do not satisfy the tests referred to above will generally be for the exclusive competence of national competition authorities (see section 3.4 above for a summary of the UK merger control regime and Appendix 7 and Appendix 8 for a summary of the basic jurisdictional tests and notification requirements for the national merger control regimes in other EU and EFTA States) – though Articles 81 and 82 of the EC Treaty (dealing with anti-competitive agreements and abuse of dominance) continue to apply in such cases.

3.6 UK Competition Referral and EC Competition Proceedings

Where an offer or possible offer is referred to the Competition Commission or the European Commission initiates second stage proceedings, the offer period will end if any related condition is not waived.

4. Schemes of Arrangement

Although this memorandum deals principally with acquiring control of the target company by means of a takeover offer, it should be emphasised that it has become increasingly common for control to be acquired instead by way of a scheme of arrangement (a "Scheme"). A Scheme is a formal arrangement between a company and its shareholders, governed by Sections 895 to 899 of the Companies Act 2006 and sanctioned by the High Court. A Scheme is an "offer" for the purposes of the City Code which applies to Schemes on a modified basis (see Appendix 7 of the City Code).

A Scheme must be approved both by the shareholders of the target company and by the High Court. Shareholder approval must constitute a majority in number of each class of shareholders whose shares are the subject of a Scheme and who are voting at the meeting. This majority must represent at least 75 per cent. in number of those shares which are voted (if the offeror or its associates hold any target shares they will not be able to vote them). The arrangement is binding on the target company and on all the shareholders involved.

The fact that a Scheme is binding on all the relevant shareholders provides certainty and can offer particular attractions when an offeror is confident of gaining the support of target company shareholders holding 75 per cent. of the shares, but believes that the 90 per cent. level needed for the compulsory acquisition procedures (see paragraph 1.8 of Appendix 3) to apply may be difficult to attain. Also, where a Scheme is implemented not by way of transferring shares in the target company but, instead, by cancelling shares in the target company and utilising the resulting reserve in issuing new shares to the offeror, there is a resulting advantage in the fact that no stamp duty (currently payable at the rate of 0.5 per cent.) is payable (there being no transfer of shares).

In general, a Scheme is a less flexible procedure, particularly because of the High Court constraints on timetable. Also, it requires the co-operation of the target company and so cannot be used where an offer is hostile.

5. Overseas Shareholders

The laws of other jurisdictions may be relevant to a takeover if the target has shareholders which are resident or incorporated outside the UK. As a general guideline, specific advice should usually be obtained in relation to any jurisdiction if any of the following apply:-

- target securities are listed or dealt in on a securities exchange in that jurisdiction or are dealt in on an over-the-counter market in that jurisdiction;
- more than one per cent. of target securities are owned by overseas shareholders in that jurisdiction;
- there are more than 50 overseas holders of target securities in that jurisdiction;
- target securities have been marketed in that jurisdiction; or
- target complies with any filing or reporting requirements relating to its securities in the jurisdiction concerned.

6. Specific Tax Considerations for Overseas Offerors

An overseas offeror with no existing subsidiary in the UK could carry out an acquisition of a UK target company itself or through the medium of a new UK offeror company. In making that decision the following points should be considered.

In the past, a new UK offeror company was often established to effect the acquisition in order that that company could borrow to fund the acquisition, with the interest expense then being set off against the future UK taxable profits of the UK target company by way of group relief. Whilst this still remains a good starting point, following recent changes there are a number of issues that need to be considered in this area.

In particular, interest may not be deductible by the UK offeror:

- to the extent that the UK offeror is thinly capitalised; or
- if the debt has any hybrid features, and so falls foul of the UK's anti-arbitrage rules; or
- if the aggregate debt in the merged UK group exceeds 75% of the consolidated offeror group's worldwide debt, and so falls foul of the UK's worldwide debt cap provisions.

A future sale by the UK offeror of the target will theoretically be within the UK capital gains tax net, although if the target is a trading group and the UK offeror holds the shares in the target for more than a year, any gain should be exempt under the substantial shareholding exemption. A sale of the UK offeror by its non-UK shareholder would remain outside the UK capital gains tax net. Dividends paid by the target company to the UK offeror and by the UK offeror should also be exempt from UK tax.

There is, however, no need to use a UK offeror, particularly if there is no desire to take an interest deduction for acquisition debt in the UK, perhaps because any interest expense is instead taken as a deduction in another jurisdiction.

All or part of the consideration offered to the UK target company's shareholders may take the form of shares or loan notes. This may be attractive to shareholders from a UK tax perspective, as they should then be able to defer an appropriate proportion of any capital gains tax liability in respect of their target shares. Consideration would, however, need to be given to the tax treatment of interest and dividend payments in the hands of such shareholders, particularly any non-UK withholding tax imposed on such payments.

7. Further Information

Further information on certain aspects of takeovers in the United Kingdom is given in the Appendices to this memorandum as follows:-

Appendix 1 – The City Code: General Principles

Appendix 2 – Key Provisions of the City Code

Appendix 3 – Dealing and Disclosure Requirements Prior to an Offer Announcement and During an Offer Period

Appendix 4 - Important Thresholds of Shareholdings in Takeovers

Appendix 5 - Definition of "Persons Acting in Concert"

Appendix 6 - Summary Offer Timetables

Appendix 7 - UK Merger Control Regime

Appendix 8 - National Merger Control in other EU and EFTA States

This Memorandum is intended to give general information only. It does not seek to give advice or to be an exhaustive statement of the law or practice and readers should take specific advice on any particular matter which concerns them. If you require any advice or information, please contact your usual adviser at Slaughter and May.

Appendix 1
The City Code: General Principles

TEXT OF GENERAL PRINCIPLES

The following are the General Principles of the City Code (references to "offeree company" mean the target company):-

1. All holders of the securities of an offeree company of the same class must be afforded equivalent treatment; moreover, if a person acquires control of a company, the other holders of securities must be protected.

2. The holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the bid; where it advises the holders of securities, the board of the offeree company must give its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the company's places of business.

3. The board of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid.

4. False markets must not be created in the securities of the offeree company, of the offeror company or of any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted.

5. An offeror must announce a bid only after ensuring that he/she can fulfil in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration.

6. An offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.

Appendix 2
Key Provisions of the City Code

The following is a summary of certain key Rules of the City Code (other than those relating to dealings (and disclosure of dealings) and mandatory offers, which are dealt with in Appendix 3).

1. Preparation of an Offer

Subject to certain limited exceptions, the announcement of an offer signals the formal commencement of the offer process. Rule 1(a) of the City Code provides that the offer must be put forward to the board of the target company or to its advisers (before a public announcement of the offer is made). In the case of a hostile offer the relevant communication would ordinarily take place only a few minutes before public announcement. Conversely in the case of a recommended offer, the period would clearly be significantly longer.

The offeror has to send its offer document to shareholders of the target company and persons with information rights within 28 days of the announcement (Rule 30.1 of the City Code). To avoid there being offers which cannot be implemented and so as to avoid the creation of a false market in the shares of the target company and, where relevant, the offeror, General Principle 5 of the City Code provides that an offeror must announce a bid only after ensuring that he/she can fulfil in full any cash consideration that is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration.

Occasionally, the City Code requires the making of an announcement before the parties would otherwise wish. An announcement is required by Rule 2.2 of the City Code when, ***inter alia***:-

- following an approach to the target company, the target company is the subject of rumour and speculation or there is an untoward movement in its share price. This will be considered in light of all the relevant facts, for example the percentage movements of the target company's share price. A movement of approximately 10 per cent. or a rise of five per cent. in the course of a single day may be regarded as untoward for the purposes of Rule 2.2;

- before an approach has been made, the target company is the subject of rumour and speculation or there is an untoward movement in its share price and there are reasonable grounds for concluding that it is the potential offeror's actions (whether through inadequate security or otherwise) which have led to the situation; or

- negotiations or discussions relating to a possible offer are about to be extended to include more than a very restricted number of people (outside those who need to know in the parties concerned and their immediate advisers). An offeror wishing to approach a wider group, for example, in order to arrange financing for the offer (whether equity or debt), where a consortium to make an offer is being organised or where irrevocable commitments are being sought, should consult the Panel.

Before the board of the target company is approached, the responsibility for making an announcement can lie only with the offeror. The offeror should, therefore, keep a close watch on the target company's share price for any sign of untoward movement. Following an approach to the board of the target company, the primary responsibility for making an announcement would normally rest with the board of the target company who, in turn, must, therefore, keep a close watch on its share price (Rule 2.3 of the City Code).

Where there has been an announcement of a firm intention to make an offer, the offeror must make an offer unless either the making of the offer is subject to the prior fulfilment of a specific condition and that condition has not been met (Rule 2.7 of the City Code) or the consent of the Panel is obtained. A change in general economic, industrial or political circumstances will not justify failure to proceed with an announced offer. An offeror must, therefore, ensure that he has all the funding in place to satisfy the offer in full before announcing the offer.

Further, a potential offeror should take care in making any statement as to its future intention or otherwise to make an offer. A person making a statement that he does not intend to make an offer for a company will normally be bound by that statement for a period of six months, unless there is a material change of circumstances or an event has occurred which the person specified in his statement as an event which would enable it to set aside the offer. The Panel should be consulted in advance about any such statement (Rule 2.8 of the City Code).

1.1 Secrecy

It is vitally important before an announcement of an offer that absolute secrecy is maintained. The City Code requires that all persons privy to confidential information, and particularly price sensitive information, concerning an offer or contemplated offer must treat that information as secret and may only pass it to another person if it is necessary to do so and if that person is made aware of the need for secrecy (Rule 2.1 of the City Code).

1.2 Contents of an Announcement

The announcement of the offer is required by Rule 2.5 of the City Code to contain a number of matters, including the terms of the offer, the identity of the offeror and details of any existing holding of shares, or options over shares or outstanding derivatives, in the target company owned or controlled by the offeror or persons acting in concert with it, as well as details of any short positions; the announcement must also set out all the conditions to which the offer or the making of it is subject. **The offeror must ensure that all the conditions of the offer are correct in the announcement as there will be no opportunity to change such conditions at a later date.**

The offer will typically be subject to a number of conditions. In the case of a takeover offer, it must normally be a condition that the offer will not be declared unconditional unless the offeror has acquired or agreed to acquire shares carrying over 50 per cent. of the voting rights attributable to each of the equity share capital in the target company alone and the equity share capital and the non-equity share capital combined (Rule 10 of the City Code). This condition (the "acceptance condition") is, except in the case of a mandatory offer under Rule 9 (see Appendix 3 below), usually drafted so as to be conditional on 90 per cent. acceptances (which would then generally allow compulsory purchase of the balance) but with the offeror having power to reduce this to shares carrying over 50 per cent. of the voting rights. In the case of an offer implemented by way of a Scheme, the offer will usually be conditional upon the Scheme becoming effective, which is in turn conditional upon the passing of the resolutions at the shareholder meetings, the sanction of the Scheme by the Court and the registration of the Court order by the Registrar of Companies. There will be many other conditions.

Some of these will be in relation to formal matters, such as consents of regulatory bodies, the offeror's shareholders in general meeting and the UKLA and London Stock Exchange. Others will relate to the continuing nature and condition of the target company and its business. In any event, the conditions of an offer must not depend solely on subjective judgements by the directors of the offeror or of the target company or on conditions the fulfilment of which are in their hands (Rule 13 of the City Code). It should be noted that the terms of any arrangement or agreement, whether or not in writing, entered into by the offeror which relates to the circumstances in which it may or may not invoke or seek to invoke a pre-condition or condition to its offer and the consequence of it doing so, will be disclosable unless dispensation is obtained from the Panel.

The press announcement would also invariably set out the offeror's rationale for making the offer.

1.3 Irrevocable Undertakings

Before a bid is announced an offeror will often seek irrevocable undertakings from certain key shareholders in the target, and target directors who are also target shareholders, that they will accept the bidder's offer (or, in the case of a Scheme, vote in favour of the Scheme at the shareholder meetings). An offeror proposing to contact a private individual or small corporate shareholder with a view to seeking an irrevocable commitment must consult the Panel in advance (Rule 4.3 of the City Code). Irrevocable undertakings may be legally binding in all circumstances (unless and until the offer lapses) or may cease to apply in the event of a higher offer.

1.4 Conditions and Pre-Conditions

The City Code permits an offeror to include conditions or pre-conditions to the offer which need to be satisfied in order for the offer to proceed. A pre-condition is a condition which must be satisfied or waived before the offer is formally made by the sending of the offer document, whereas a condition to the offer itself applies when the offer has been formally made by the sending of the offer document.

As mentioned above, an offer must not normally be subject to conditions or pre-conditions which depend solely on subjective judgements by the directors of the offeror or of the target company, or the fulfilment of which is in their control. An element of subjectivity may be acceptable to the Panel where it is not practicable to specify all the factors on which satisfaction of a particular condition or pre-condition may depend (Rule 13.1 of the City Code).

The Panel must be consulted in advance if any person proposes to include in an announcement any pre-conditions to which making of the offer will be subject. Except with the consent of the Panel, an offer must not be announced subject to a pre-condition unless the pre-condition relates to there being no reference, initiation of proceedings or referral to or by the Competition Commission or the European Commission, or it relates to certain material official authorisations or regulatory clearances (Rule 13.3 of the City Code).

The City Code contains constraints on the ability of the offeror to invoke conditions and pre-conditions. The offeror may only do so if the circumstances which give rise to the right to invoke the condition or pre-condition are of material significance to the offeror in the context of the offer. In applying this provision, the Panel will consider the extent to which the condition or pre-condition was negotiated with the target, whether the condition or pre-condition was drawn to the attention of the target's shareholders along with a clear explanation of when it could be invoked and whether the condition was adapted to fit the circumstances of the target.

Following the announcement of a firm intention to make an offer, an offeror should use all reasonable

efforts to ensure satisfaction of any conditions or pre-conditions to which the offer is subject (Rule 13.4 of the City Code).

A "no material adverse change" clause is often included in offer documents (to the effect that there has been no material adverse change in the financial or trading position or profits or prospects in the target group since that disclosed in the most recent accounts). The Panel has ruled that for an offeror to invoke a material adverse change condition, and so withdraw its offer, the offeror is required to demonstrate to the Panel that exceptional circumstances have arisen affecting the target which could not have reasonably been foreseen at the time of the announcement of the offer and which are of an entirely exceptional nature. Failure to identify a specific liability of the target group in the course of due diligence before the offer is made would not normally provide grounds on which subsequently to withdraw an offer.

1.5 Convertible Securities and Option Holders

When a takeover offer subject to the City Code is made, and the target has convertible securities outstanding (which in this context includes share options and subscription rights, such as warrants), the offeror is required to make an appropriate offer or proposal to these convertible security holders to ensure that their interests are safeguarded. Equality of treatment is required (Rule 15(a) of the City Code).

The target board is required to obtain competent independent advice as to the merits of the offer or proposal to convertible security holders and this advice (together with the target board's views on the offer or proposal) should be made known to the security holders (Rule 15(b) of the City Code).

As with Rule 14 of the City Code (see below), these offers should not normally be made conditional on any particular level of acceptances.

Whenever practicable, the offer to convertible security holders should be sent at the same time as the offer document. However, if this is not practicable, the Panel should be consulted and the document sent out as soon as possible with a copy being lodged at the Panel at the same time (Rule 15(c) of the City Code). In practice, the offer to option holders in the target is generally not sent at the same time as the offer document. A statement indicating that the bidder will make appropriate proposals to the holders of share options in the target is conventionally included both in the initial press announcement and in the offer document and the proposals are usually only sent to option holders once the offer has become wholly unconditional.

In addition, where practicable, relevant documents, announcements and other information sent to target shareholders must also be sent simultaneously to holders of convertible securities. If those holders are able to exercise their rights during the course of the offer, and to accept the offer in respect of the resulting shares, their attention should, where appropriate, be drawn to this fact in the documents (See note on Rule 15 of the City Code).

1.6 Offers for other Classes of Shares and Rights in Respect of Shares

Where a company has more than one class of equity share capital, a "comparable" offer must be made for each class of equity shares (Rule 14.1 of the City Code), whether such capital carries voting rights or not. A comparable offer does not have to be identical but any differences must be capable of being justified to the Panel; the Panel must be consulted in advance. An acceptance condition may not be attached to an offer for non-voting equity share capital unless the offer for the voting equity share capital is itself conditional on the success of the offer for the non-voting equity share capital.

The offeror must make a separate offer for each class of shares that it wishes to acquire (Rule 14.2 of the City Code).

1.7 Financing Arrangements

Although the entire offer consideration sometimes takes the form of securities in the offeror, it is usual for some or all of the consideration to be in the form of cash. This cash could derive from the company's own resources but it could also be raised, in whole or in part, by means of an underwriting of shares in the offeror. A common method of underwriting in such circumstances is a so-called "cash underpinning" where the offeror arranges for its financial adviser to make a separate offer to the shareholders in the target company to acquire the shares in the offeror to which they are entitled as consideration under the offer, such offer being at a fixed price. Target shareholders who wish to receive cash would accept such offer. It would also be possible, although it is less common, for the underwriting to take the form of a rights issue.

Where the offeror funds some or all of the consideration from new bank facilities, it is necessary in light of the requirement of the City Code, that the offeror be able to implement the offer, that the offeror should have available to it an unconditional loan agreement at the time of announcement of the offer. The offeror's financial adviser will also be concerned in light of its obligations in relation to cash confirmation (see paragraph 2.3 below), that the cash under the facility be available for the purposes of the implementation of the offer. Accordingly, the financial adviser has an interest in ensuring that the facility be provided on terms that it will continue to be available until the entire cash consideration under the offer has been paid notwithstanding that an event of default may have occurred or some other right to withdraw the funding may have arisen.

It is common for at least part of the consideration being provided to take the form of securities, even if only a debt instrument, so as to give those UK tax resident target company shareholders who are liable to taxation on capital gains the opportunity of "rolling over" their capital gain into the consideration securities, thus deferring a charge to taxation.

1.8 Due Diligence

The offeror will invariably conduct a due diligence exercise in relation to the target company before announcing an offer. The extent of the due diligence exercise in the case of a hostile offer will be limited to reviewing publicly available information, such as the results of searches of public registers and financial analysts' reports. In the case of a recommended offer, the due diligence exercise may be much more extensive, but the target company will often seek to limit its extent, either because it does not wish the offeror, who may be a competitor, to obtain confidential information from it, or because it would not wish the information to be made available to an alternative offeror (see paragraph 3.1 below in relation to Rule 20.2 of the City Code) or because the target company wants to ensure that details of a potential bid are not leaked to the public. For all these reasons, as a matter of practice, due diligence in public offers is often limited in comparison with private sales. The target company will, prior to handing over any information, ordinarily insist upon the potential offeror entering into a confidentiality agreement and it would also often seek to include in the confidentiality agreement "standstill" provisions, that is to say provisions restricting for a specified period the ability of the offeror to acquire target company shares without the consent of the board of the target company. There are difficult questions of law as to the enforceability of standstill arrangements.

2. Documents from the Offeror and Target Board

2.1 Standards of Care and Directors' Responsibility for Documents

Rule 19.1 of the City Code requires documents or advertisements published in the course of takeovers to be prepared with the highest standards of care and accuracy. The directors of the parties to the takeover must take responsibility for documents and advertisements published by their respective companies and the documents and advertisements must contain a responsibility statement to that effect (Rule 19.2 of the City Code). This will also apply to any offer-related information published on a CD-ROM or website. The inclusion of such a responsibility statement may expose directors to liability for any negligent misstatements to shareholders to whom the takeover documents are addressed.

In the case of a recommended bid the common form of responsibility statement to be given by the directors of the:-

A. offeror in the offer document (or Scheme circular) would be:-

> "the directors of [offeror] each accept responsibility for the information contained in this document other than that relating to [target group], the directors of [target], and the persons whose interests in shares the directors of [target] are taken to be interested in pursuant to Part 22 of the Companies Act 2006. To the best of the knowledge and belief of the directors (who have taken all reasonable care to ensure that such is the case), the information contained in this document for which they accept responsibility is in accordance with the facts and does not omit anything likely to affect the import of such information";

B. target company in the offer document (or Scheme circular) would be:-

> "the directors of [target] each accept responsibility for the information contained in this document relating to [target group], the directors of [target], and the persons whose interests in shares the directors of [target] are taken to be interested in pursuant to Part 22 of the Companies Act 2006. To the best of the knowledge and belief of the directors of [target] (who have taken all reasonable care to ensure that such is the case) the information contained in this document for which they accept responsibility is in accordance with the facts and does not omit anything likely to affect the import of such information".

A common form of responsibility statement to be given by the directors of the offeror in the offer document in the case of a hostile offer would be:-

> "the directors of [offeror] each accept responsibility for the information contained in this document save that the only responsibility accepted by them in respect of the information contained in this document relating to [target group], which has been compiled from published sources, has been to ensure that such information has been correctly and fairly reproduced and presented. To the best of the knowledge and belief of the directors of [offeror] (who have taken all reasonable care to ensure that such is the case) the information contained in this document for which they accept responsibility is in accordance with the facts and does not omit anything likely to affect the import of such information."

2.2 General Obligation as to Information

Rule 23 of the City Code provides that shareholders must be given sufficient information and advice to enable them to reach a properly informed decision as to the merits or demerits of an offer and the

information must be available early enough to enable shareholders to make a decision in good time. There is no requirement to publish a profit forecast. The obligation of an offeror in these respects towards the target company's shareholders is no less than its obligation towards its own shareholders. Rule 27.1 of the City Code provides for the updating of certain information where there has been a material change in information previously published during an offer period.

2.3 Offer Document

The offer document contains the formal offer to the shareholders of the target company. It must normally be sent within 28 days of the announcement of a firm intention to make an offer (Rule 30.1 of the City Code). The offer document will ordinarily contain a letter from the offeror setting out the offer and, where the offer is recommended, a letter from the chairman of the target company. In addition, the City Code lays down detailed requirements as to the content of an offer document, some of which are discussed below. The offer document is accompanied by a form of acceptance which will be used by shareholders of the target company to accept the offer.

In the case of an offer implemented by way of a Scheme, the Scheme circular will take the place of the offer document. The contents of the Scheme circular are governed by both the City Code and Section 897 of the Companies Act 2006.

The offer document must contain the offeror's intentions regarding the future business of the target company, its strategic plans for the target company (and their likely effect on employment and business locations) and its intentions regarding deployment of fixed assets. It must also state the offeror's long term commercial justification for the offer as well as its intentions regarding the continued employment of the employees of the target company and its subsidiaries (Rule 24.1 of the City Code).

Rule 24.2(a) of the City Code sets out the financial and other information regarding the offeror which must be contained in the offer document where the offeror is a listed company and the consideration includes securities. Less detailed financial information is required where the offer is solely in cash (Rule 24.2(b) of the City Code). Information must also be given in respect of the target company, whether or not it is listed (Rule 24.2(e) of the City Code). Where the offeror is not a listed company, it should disclose the information required of a listed offeror so far as is appropriate and such further information as the Panel may require (Rule 24.2(c) of the City Code).

In the case of an offer implemented by way of a scheme of arrangement, where the offer is solely in cash, the requirements for financial information on the offeror will normally be waived.

For the purposes of the City Code, even if no figure is mentioned, any form of words which puts a floor under, or a ceiling on, the likely profits of a particular period or contains the data necessary to calculate an approximate figure for future profits will be treated as a profit forecast (**Rule 28.6(a) of the City Code**). An earnings enhancement statement is a statement of the effect of the acquisition on future earnings (for example, "the acquisition will be earnings enhancing by the end of the next financial year"). A merger benefits statement is a quantified statement about the expected financial benefits of a proposed takeover or merger (for example, a statement by the bidder that it would expect the target to contribute an additional £x of profit following the acquisition).

Parties must be particularly careful when making earnings enhancement statements. If such statements are not intended to be profit forecasts then this must be expressly stated (Rule 28.6(g) of the City Code). The City Code also provides that certain additional requirements will normally need to be complied with if statements are made by a party about the expected

financial benefit of a proposed takeover or merger (Note 8 to Rule 19.1 of the City Code).

Rule 24.3 of the City Code requires certain holdings and dealings to be disclosed, including the holdings of the offeror in the target company and holdings in the offeror and the target company (in the case of a securities exchange offer only) in which directors of the offeror are interested.

The offeror must have sufficient funds to be able to implement the offer in full. Where the offer is for cash or includes an element of cash, Rule 24.7 of the City Code provides that the offer document must contain a confirmation by an appropriate third party (e.g. the offeror's bank or financial adviser) that the offeror has sufficient resources available to satisfy full acceptance of the offer. The party confirming that resources are available will not be expected to produce the cash itself if, in giving the confirmation, it acted responsibly and took all reasonable steps to assure itself that the cash was available.

The offer document must be provided to the Panel in hard copy and electronic form before publication and to all of the other parties to the offer at the time of publication (Rule 19.10 of the City Code).

2.4 Target Response

Normally within 14 days of the publication of the offer document, the target board must publish its views on the offer to its shareholders (Rule 30.2 of the City Code) and must make known in the document circulated the substance of the advice given to it by its independent advisers (Rule 25.1 of the City Code). In the case of a recommended offer (including an offer to be implemented by way of a scheme of arrangement) this is done in the offer document. Otherwise, such views will be published in the defence document. If the board is split in its views on an offer, the directors who are in a minority should also publish their views.

The Panel will normally require that the minority views be circulated by the target company.

The target board must provide its shareholders in good time with all the facts necessary to enable them, taking into account the recommendation of the target board and the target company's financial advisers, to make an informed decision whether to accept the offer. Rule 25 of the City Code sets out the requirements for the content for the first major circular from the target board. These include requirements as to disclosure of certain holdings in relevant securities and dealings, directors' service contracts and material contracts entered into by the target in the two year period prior to the commencement of the offer period.

2.5 Section 397 of the Financial Services and Markets Act 2000 ("FSMA") and Financial Promotion

Provisions of the criminal law back up the requirement for documents not to be false or misleading.

Section 397 FSMA provides that it is a criminal offence where a person who either makes a statement, promise or forecast which he knows to be misleading, false or deceptive or dishonestly conceals any material facts or recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive if, in either such case, he makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not the person to whom the statement, promise or forecast is made or from whom the facts are concealed) to enter or offer to enter into, or to refrain from entering or offering to enter into, an agreement, ***inter alia***, to acquire shares or to exercise, or refrain from exercising, any rights conferred by an investment, including the right to dispose of the investment.

The financial promotion regime of FSMA provides that, as a general rule, an unauthorised person must

not, in the course of business, communicate an invitation or inducement to engage in investment activity. This prohibition will not apply if the content of the communication is approved for the purposes of Section 21 FSMA by an authorised person in accordance with FSMA rules. The FSA's view is, however, that communications made in the course of a takeover are likely to be exempt from the financial promotions regime.

There is also now, following implementation of the Takeover Directive, criminal liability for failure to comply with the content requirements for offer documents or defence documents.

2.6 Payments to Directors

There is an obligation to disclose in the offer document any termination payments that the offeror has agreed to make to the target directors (Rule 24.5 of the City Code). Approval of target shareholders in extraordinary general meeting will also be required unless the payment is by way of damages for breach of contract or a pension in respect of past services.

2.7 The Publication of Documents relating to an Offer

The City Code allows a document to be sent in hard copy form, electronic form or by displaying it on a website (Rule 19.8 of the City Code). The offeror may only send documents in electronic form if the recipient has provided its electronic address (normally an email address or a fax number) to the target for general purposes. A person who receives a document in electronic form may request that a hard copy of that document is sent to them and any such request must be satisfied within two business days (Rule 19.9 of the City Code). A person may request that all future documents are sent to them in hard copy form (Rule 19.9 of the City Code). Subject to any such request, the sender is free to decide the form in which any document is sent.

Alternatively, if the material is published on a website, a "website notification", giving notice of the publication of the document on a website and providing details of that website must be sent to the recipient on the same day that the material is first displayed (Rule 19.9 of the City Code). The website and any website notification must contain a statement that any person entitled to receive that document may request a copy of that document in hard copy form and may request that all future documents are sent to that person in hard copy form (Rule 19.9 of the City Code). The information in a website notification must be confined to non-controversial information about an offer and should not be used for argument or invective (Notes to definition of "Website notification" of the City Code).

3. Defences to a Hostile Offer

3.1 Restraints on Action under the City Code

General Principle 3 of the City Code provides that the target board must not deny the holders of securities the opportunity to decide on the merits of the bid. Rule 21 of the City Code provides further detail on this prohibition by providing that, during the course of an offer, or earlier if it believes a ***bona fide*** offer might be imminent, the board must not, except in pursuance of a contract entered into earlier, without the approval of shareholders in general meeting, act as follows:-

- issue any authorised but unissued shares or transfer or sell any shares out of treasury or issue or grant options in respect of unissued shares;
- create or issue, or permit the creation or issue of, any securities carrying rights of conversion into or subscription for shares;
- sell, dispose of or acquire, or agree to sell, dispose of or acquire, assets of a material amount (10 per cent. of assets is suggested by the City Code as a guideline of what would be material); or

- enter into contracts other than in the ordinary course of business, for example for the significant enhancement of a director's terms of service.

It should be noted that, by means of aggregation, transactions of minor significance individually may be deemed frustrating action when considered together.

Rule 3.1 of the City Code obliges the board of the target company to obtain competent independent advice on any offer; this will ordinarily be from an investment bank. The adviser to the target should have a sufficient degree of independence from the offeror to ensure objective advice. An adviser to the target company who is rewarded by the target on failure of an offer will normally be disqualified from acting as an independent adviser, due to a conflict of interest (Note 3 to Rule 3.3 of the City Code).

Other provisions of the City Code are also relevant to the conduct of a bid defence. For example, if the target company has previously provided information to one offeror or potential offeror then, by reason of Rule 20.2 of the City Code, the same information must be given to another offeror or ***bona fide*** potential offeror, if it requests such information, even where that other offeror is less welcome and even where the offeror has not been named and/or no formal announcement has been made. Also, during the offer period, financial advisers and stockbrokers (and persons under common control with them) to the target company are prohibited from purchasing target shares and entering into other specified arrangements relating to the purchase of such shares (Rule 4.4 of the City Code).

3.2 Practical Implications

A number of defensive tactics which might be prevalent in some jurisdictions are not so in the UK. For example, so-called "poison pills", whereby it is ensured that a target company cannot be bid for or can only be bid for on unattractive terms, could not be adopted by the board of directors of a target company because, first, in all but a most extreme case, to do so would be a breach of fiduciary duty and, secondly, because of General Principle 3 and Rule 21 of the City Code. Also, where the poison pill would involve amending the capital structure of the target company or the rights attaching to its share capital, then the consent of the company's shareholders at a general meeting would be required prior to implementation.

Once an offer has been made, the extent to which action by the target board is permitted depends upon the view which it has properly formed of the offer. If, for example, the board has properly formed the view that the offer, if successful, would be damaging to the target company then it might be possible (within the constraints of Rule 21 of the City Code) to take steps to frustrate the offer, for example, by seeking to persuade a relevant regulatory authority that a consent required in order for the offer to proceed should not be given (the 1989 offer by Hoylake for BAT). On the other hand, the Panel has taken the view that the bringing of litigation to frustrate an offer would not be permitted (the 1989 offer by Minorco for Consolidated Goldfields).

A further possibility is that the board of the target company forms the view that the offer does not value the target company sufficiently highly. In such circumstances, the target company will seek to persuade its shareholders as to the value of the target company. This may involve the preparation of a profit forecast or an asset valuation. Other legitimate means of persuading the shareholders of the target company of the company's value would be, for example, the fashionable defensive measure of promising shareholders the payment of a special dividend in the target company should the offer fail or, alternatively, to effect a repurchase of its share capital should the offer fail. Such proposals do not contravene Rule 21 of the City Code. Where part of the consideration being offered by the offeror is shares in the offeror, it would be common for a target company to argue that such shares are less valuable than might at first sight appear.

4. Timing

The City Code contains detailed Rules relating to the timing of takeover offers, and a smaller number of Rules relating to the timing of schemes of arrangement. All time periods are in calendar days (not business days), unless otherwise indicated.

4.1 Takeover Offers

The main provisions of the City Code relating to the timing of takeover offers are:-

A. an offer document must normally be sent to shareholders of the target company and persons with information rights within 28 days of the announcement of a firm intention to make it (Rule 30.1 of the City Code);

B. an offer must normally be open for acceptance for at least 21 days after it is sent (Rule 31.1 of the City Code);

C. the target company's directors must normally advise shareholders of their views within 14 days after the offer document is sent (Rule 30.2 of the City Code);

D. any material new information to be published by the target must be published not later than 39 days after the offer document is sent (Rule 31.9 of the City Code);

E. an offer may not normally be increased later than 46 days after it is sent or less than 14 days from its final closing date;

F. an offer must normally remain open for acceptance for a further 14 days after it has become unconditional as to acceptances (Rule 31.4 of the City Code), as must offers of alternative forms of consideration (Rule 33 of the City Code), although, if certain conditions are satisfied, this does not apply to "mix and match" offers nor to cash alternatives by way of cash underpinnings where the value of the cash underwritten alternative is, at the time of announcement, more than half the maximum value of the offer (Rule 33 of the City Code);

G. an offer may not be extended beyond the 60th day after it was sent unless it has by then become or been declared unconditional as to acceptances (Rule 31.6 of the City Code);

H. all conditions of an offer must be fulfilled within 21 days of the first closing date for acceptances or, if later, the date on which it becomes or is declared unconditional as to acceptances, failing which the offer must lapse (Rule 31.7 of the City Code); and

I. settlement of the consideration (in respect of acceptances which are complete in all respects) within 14 days of the first closing date for acceptances or, if later, the date upon which the offer becomes or is declared wholly unconditional (Rule 31.8 of the City Code).

Note 3 to Rule 31.6 of the City Code gives the Panel the discretion to stop the offer timetable running for a period if there is a significant delay in a decision as to whether or not the offer should be referred to the Competition Commission or the initiation of proceedings by the European Commission.

Where a competing offer has been announced, the Panel will normally consent to the first offeror extending its offer beyond the 60th day even where the offer has not become unconditional provided consent is sought before the 46th day following the sending of the competing offer document. Both the offerors will normally be bound by the timetable established by the sending of the second competing offer document (Note 4 on Rule 31.6 of the City Code). If a competitive bid situation continues to exist in the later stages of the offer period, the Panel

will normally require revised offers to follow an open auction procedure unless an alternative procedure is agreed between the competing offerors and the board of the target company (Rule 32.5 of the City Code).

A summary offer timetable is set out in Appendix 6. The summary assumes that there is no competing offeror. If there were a competing offeror then the first offeror would effectively move on to the timetable of the second offeror.

4.2 Schemes of Arrangement

Most of the provisions relating to the timing of takeover offers set out above do not apply to a scheme of arrangement, which will largely be governed by the Court process. However, the City Code does impose some constraints on the Scheme timetable. In particular:-

A. since Rule 30.1 is not varied in relation to a Scheme, the Scheme circular should still be sent within 28 days of the announcement of a firm intention to make an offer;

B. the shareholder meetings must normally be convened for a date at least 21 days after the date of the Scheme circular (Appendix 7, paragraph 3);

C. revisions to the Scheme should normally be made no later than 14 days before the shareholder meetings, and Panel consent is required for revisions after that date (Appendix 7, paragraph 7);

D. if the Scheme permits shareholders to elect to receive alternative consideration or to vary the proportions of different forms of consideration they receive, then the right to elect must not be closed off before the shareholder meetings. Likewise, shareholders' right to withdraw such elections may not be shut off earlier than one week before the Court sanction hearing (Appendix 7, paragraph 9); and

E. consideration must be sent to target shareholders within 14 days of the date on which the Scheme becomes effective (Appendix 7, paragraph 10).

Where an offer is implemented by way of a scheme of arrangement, there is no equivalent of the "Day 39" rule noted at paragraph (D) in the section above on takeover offers. This means that there is no cut-off date after which the target may not publish material new information, such as profit forecasts or preliminary/interim results.

The City Code does not set a date by which the target must hold the shareholder meetings, nor – where a Scheme is used – a last date by which all of the conditions to the offer must be fulfilled or satisfied.

A summary Scheme timetable is set out in Appendix 6. The summary assumes there is no competing offeror.

4.3 No further offers for 12 months following lapsing or withdrawal

In the case of both a takeover offer and a Scheme, except with the consent of the Panel, where an offer has been announced and has been withdrawn or lapsed, neither the offeror nor any person who is or was acting in concert with the offeror may within 12 months from the date on which such offer is withdrawn or lapses make an offer for the target company or put himself in a position whereby he would be obliged under Rule 9 of the City Code to make an offer (Rule 35.1 of the City Code). This is to prevent an offeror from putting a target company under continual siege. The notes to Rule 35.1 of the City Code specify circumstances in which the Panel will normally grant consent for a further offer to be made notwithstanding that the 12-month period has not elapsed. These include where the previous offer lapsed in accordance with Rule 12 of the City Code and the new offer follows a clearance of the Competition Commission or issuing of decision by the European Commission but clearance has now

been given (in such circumstances any offer must normally be announced within 21 days after the announcement of such clearance), where the new offer follows the announcement of an offer by a third party for the target company or where the new offer is recommended by the board of the target company; although in this case consent will not normally be granted within three months of the lapsing of an earlier offer in circumstances where the offeror was prevented from revising or extending its previous offer as a result of a no increase statement or a no extension statement or was one of two or more competing offerors whose offers lapsed with combined acceptances of less than 50 per cent. of the voting rights of the target company (Note (a)(i) on Rules 35.1 and 35.2 of the City Code).

Appendix 3
Dealing and Disclosure Requirements Prior to an Offer Announcement and During an Offer Period

All references in this Appendix to an offeror should be read as references to the offeror and all persons "acting in concert" with it. (A detailed note on who should be regarded as acting in concert for the purposes of the City Code is set out in Appendix 5.)

The City Code is concerned primarily with voting rights. **It is assumed for the purposes of this Appendix that the target company has only ordinary shares in issue and that there are no other voting rights**.

Except where otherwise stated, a reference to a person owning or acquiring an "interest in shares" or an "interest in securities" is a reference not only to a person owning shares or securities, but would also include a person owning or acquiring the right to exercise or direct the exercise of voting rights attaching to the shares or securities (or generally controlling the shares or securities) or having a right to call for the shares or securities or being under an obligation to take delivery of the shares or securities (whether any such right or obligation is conditional or absolute) or being party to any derivative resulting in the person having long economic exposure to changes in the price of the shares or securities. Except for the purposes of Rule 5 (see below), a person is not to be treated as having or acquiring an interest in shares or securities by virtue of obtaining an irrevocable commitment to accept an offer in respect of them.

The "offer period" as referred to below is the period from the announcement of a proposed or possible offer until the first closing date or, if later, the date on which the offer becomes or is declared unconditional as to acceptances or lapses (Definitions section of the City Code).

1. Dealings

1.1 Acquisitions Prior to an Offer

Rule 6.1 of the City Code stipulates that if an offeror acquires an interest in shares in a target company:-

A. within a three-month period prior to the commencement of the offer period; or

B. between any announcement of a possible offer and the announcement of a firm intention to make an offer; or

C. prior to that period if the Panel is of the view that there are circumstances which render it necessary to ensure that all shareholders in a target company are treated similarly,

then, except with the consent of the Panel in relation to (A) or (B) above, any subsequent offer by such offeror for the target company must be on no less favourable terms. If a purchase of an interest in shares in the target company has given rise to an obligation to make a cash and/or securities offer pursuant to Rule 11 (see paragraph 1.6 below), then compliance with the obligation under Rule 11 will satisfy this obligation.

1.2 Acquisitions Over 30 Per Cent. Both Before and During an Offer Period

The City Code deems control of a target to arise at an interest in shares carrying 30 per cent. of voting rights of the target and seeks to prevent an acquirer from gaining such control without making a full takeover offer. Therefore, under Rule 5.1 of the City Code, if an offeror is interested in shares carrying less than 30 per cent. of the voting rights in a target company, it may not acquire an interest in any other shares which results in it being interested in shares which carry, in aggregate, 30 per cent. or more of the voting rights. Furthermore, where an offeror is interested in shares carrying 30 per cent. or more but less than 50 per cent. of the voting rights in a target company, it may not acquire an interest in any other shares carrying voting rights in that company.

However, Rule 5.2 of the City Code permits such acquisitions where:-

A. the purchase is from a single shareholder and it is the only acquisition within a seven-day period (this will not apply if the person has announced an intention to make an offer and the posting of the offer is not subject to a pre-condition); or

B. the purchase immediately precedes, and is conditional upon, the announcement of an offer provided that the offer will be publicly recommended by, or the purchase is made with the agreement of, the board of the target company; or

C. the offeror has announced a firm intention to make an offer (the posting of which is not subject to the fulfilment of any pre-condition) if:-

    i. the purchase is made with the agreement of the target company's board; or

    ii. the offer (or any competing offer) has been publicly recommended by the target company's board; or

    iii. either:-

        a. the first closing date of the offer has passed and the Secretary of State has announced that the offer is not to be referred to the Competition Commission (or the offer does not come within the statutory provisions for possible reference) and it has been established that no action by the European Commission or a competent authority of the UK will any longer be taken in respect of the offer pursuant to the Merger Regulation (or the offer does not come within the scope of such Regulation); or

        b. the first closing date of any competing offer has passed and the Secretary of State has announced that such competing offer is not to be referred to the Competition Commission (or such competing offer does not come within the statutory provisions for possible reference) and it has been established that no action by the European Commission or a competent authority of the UK will any longer be taken in respect of such offer pursuant to the Merger Regulation (or such offer does not come within the scope of such Regulation); or

    iv. the offer has become unconditional in all respects; or

D. the purchase is by way of acceptance of the offer.

For the purposes of Rule 5 of the City Code only, "interests in shares" includes irrevocable undertakings to accept the offer. Rule 5, therefore, contrasts with the mandatory bid provisions (Rule 9 of the City Code) which do not encompass irrevocable undertakings; the interplay of the two rules means that a bidder can obtain irrevocable undertakings over 30 per cent. or more of the target's voting shares where permitted

by Rule 5 (most significantly, where the offer is to be publicly recommended) without triggering the mandatory offer provisions under Rule 9 of the City Code.

1.3 Restriction on Dealings by the Offeror during the Offer Period

An offeror must not during the offer period sell any ordinary shares in a target company without having obtained the prior consent of the Panel. Twenty-four hours' public notice must be given of any such proposed sale. Once the announcement has been made an offeror may not make any further purchases. The Panel should be consulted whenever the offeror proposes to enter into or close out any type of transaction which may result in the shares of the target being sold during the offer period, either by the offeror or the counterparty, to the transaction (Rule 4.2(a) of the City Code).

During the offer period the offeror must not acquire an interest in securities in a target company through an anonymous order book system, or through any other means, unless it can be established that the seller is not an exempt principal trader connected with the offeror (Rule 4.2(b) of the City Code).

1.4 Mandatory Offer (a "Rule 9 Offer")

Notwithstanding that purchases may be permitted as referred to in paragraph 1.2 above, if an offeror either:-

A. acquires (whether or not pursuant to a series of transactions or over a period of time) an interest in shares which, together with shares in which the offeror is already interested, carry 30 per cent. or more of the voting rights in a target company; or

B. where it is interested in shares which carry 30 per cent. or more but less than 50 per cent. of the voting rights in a target company, acquires an interest in shares in that company which increases the percentage of its voting rights,

then that offeror will, except with the consent of the Panel, be required to make a "mandatory offer" for all of the ordinary shares in the target company not already owned by it. There are limited purchasing freedoms for controlling shareholders and to allow shareholders to take up their entitlement under secondary issues.

The following must be noted in relation to a mandatory offer:-

i. the offer is permitted to be conditional only upon the level of acceptances referred to in (ii) below and, if appropriate, there being no reference to the Competition Commission or second stage proceedings being initiated by the European Commission under the relevant European Community regulation;

ii. the acceptance condition is that only 50 per cent. (plus one share) acceptances are required; and

iii. the offer must be for cash or accompanied by a full cash alternative at not less than the highest price paid by the offeror for target shares within the preceding 12 months.

When an issue of new securities by the target company would otherwise result in an obligation to make a takeover offer the Panel will normally waive the obligation if there is a vote to that effect at a shareholders' meeting (a so-called "whitewash"). Any non-independent party would not be entitled to vote at that meeting. The Panel will not normally give a waiver if the person to whom the new securities are to be issued has purchased shares in the company in the 12 months prior to the sending of the circular relating to the proposals.

Any purchase resulting in a mandatory offer becoming required must be immediately followed by an announcement that such an offer is to be made.

1.5 Nature of Consideration to be Offered

1.5.1 Required Cash Offer

If:-

A. an offeror purchases for cash, during an offer period and within the 12 months prior to its commencement, an interest in shares which carry 10 per cent. or more of the voting rights in the target company; or

B. the offeror acquires an interest in shares in the target company for cash during the offer period; or

C. in the view of the Panel it is necessary to ensure that all target shareholders are afforded equivalent treatment (the Panel will not normally exercise this discretion unless the vendors are directors of, or other persons closely connected with, the offeror or target company in which case even relatively small purchases may be relevant),

then, except with the consent of the Panel in relation to (A) or (B) above, any offer for the ordinary shares in the target not already held must be made in cash or with a full cash alternative at not less than the highest price paid by the offeror (see paragraph 1.5.3 below) during the offer period and (in the case of (A) above), the preceding 12 months (Rule 11.1 of the City Code).

Any such purchase must, if appropriate, be immediately followed by an announcement that an appropriately revised offer is to be made.

1.5.2 Required Securities Offer

If:-

A. an offeror purchases for securities, during an offer period and within the three months prior to its commencement, an interest in shares which carry 10 per cent. or more of the voting rights in the target company; or

B. an offeror purchases for securities, more than three months prior to the offer period, an interest in shares which carry less than 10 per cent. of the voting rights of the target company, but in the view of the Panel it is necessary to ensure that all target shareholders are treated similarly (the Panel will not normally exercise this discretion unless the vendors are directors of, or other persons closely connected with, the offeror or target company),

then the offeror will normally be required to offer such securities to all other holders of the ordinary shares in the target company on a same number basis (Rule 11.2 of the City Code).

There will also be an obligation to make a cash offer or provide a cash alternative (see paragraph 1.5.1 above), unless any consideration securities are to be held until either the offer has lapsed or the offer consideration has been sent to all accepting shareholders.

1.5.3 Highest Price

When calculating the value of any offer required pursuant to paragraphs 1.5.1 and 1.5.2 above, the Panel has a discretion to agree an adjusted price if the offeror considers that the "highest price" should not be paid. Factors which the Panel may take into account include the size and timing of the relevant purchases, the attitude of the

target company board, whether the interests in shares have been purchased by or from directors or connected persons, and the number of shares in which interests have been acquired in the preceding 12 months (Rule 11.3 of the City Code).

1.6 Purchases at Above the Offer Price

If, during the course of an offer, an offeror purchases an interest in shares at above the offer price, such offeror must increase its offer to not less than the highest price paid (Rule 6.2 of the City Code).

1.7 Special Deals with Favourable Conditions

Except with the consent of the Panel, an offeror may not make any arrangements with some shareholders or persons interested in shares carrying voting rights, either during an offer or when one is reasonably in contemplation, if there are favourable conditions attached which are not being extended to all shareholders (Rule 16 of the City Code). This includes: a promise to make good to a vendor of shares any difference between the sale price and the price of any subsequent successful offer; an irrevocable commitment to accept an offer coupled with the granting to target shareholders of a "put option" over the target shares should the offer fail; and any financial arrangements with the management of the target company.

1.8 Compulsory Acquisition of Minority Shareholders

An offeror has a right to compulsorily acquire the shares of minority shareholders if it has acquired, or unconditionally contracted to acquire, both 90 per cent. of "the shares to which the offer relates" and 90 per cent. of the voting rights in the company to which the offer relates.

If an offeror purchases ordinary shares in a target company prior to the time at which it makes (and not just announces) an offer, then such shares are not "shares to which the offer relates" and may not, therefore, be counted towards this 90 per cent. acceptance condition.

If, however, an offeror purchases ordinary shares during the period within which the offer can be accepted (that is, after it is made, not just announced) then those shares can be counted towards this 90 per cent. acceptance condition, provided that:-

A. the consideration for the purchase does not exceed the value of the offer; or

B. if it does exceed the value of the offer, the terms of the offer are increased up to at least the consideration for the purchase.

Minority shareholders have two balancing rights of lesser practical importance. First, they can apply to the Court for an order that the offeror may not acquire their shares or must alter the terms on offer. Such applications would only succeed in exceptional circumstances and are extremely rare in practice. Secondly, the minority may require the offeror to purchase their holdings on the terms of the offer once a simple 90 per cent. of both the issued shares and the voting rights in the target have been acquired, whatever the method of acquisition. This enables dissenting shareholders to resist the takeover until the eleventh hour without risking retention of a holding which has little more than nuisance value. Where alternative types of consideration were available under the offer, even if subsequently closed, they must again be made available to those whose shares are compulsorily acquired.

2. Disclosure

2.1 Increases and Decreases in a Holding of Voting Rights

Chapter 5 of the FSA's Disclosure Rules and Transparency Rules (DTR 5) imposes an obligation on a person who acquires in aggregate 3 per cent. or more of the voting rights in a UK listed company to give notice of such acquisition within two trading days. A further notice has to be given each time a percentage holding above 3 per cent. increases or decreases through a one per cent. threshold (rounding down to the nearest whole percentage point). Notice must also be given of a disposal which reduces the holding of voting rights to less than 3 per cent. of the relevant company's voting share capital.

The company must notify a Regulatory Information Service (RIS) as soon as possible after receipt of notification from the shareholder, and in any event by not later than the end of the trading day following receipt.

2.2 Concert Parties

A notification obligation will arise under DTR 5 where the offeror agrees with a third party who holds voting rights in the target to enter into an agreement to adopt, by concerted exercise of the voting rights, a lasting common policy towards the management of the target.

2.3 Disclosure of Dealings by Parties to a Takeover

Any dealings in relevant securities by the parties to a takeover and by any associates (and by an exempt principal trader connected with the offeror or target company (Rule 38.5 of the City Code)) during the offer period must be disclosed in writing on a daily basis to a Regulatory Information Service (RIS) with a faxed copy of such disclosure to the Panel. Disclosures must be made not later than 12.00 noon on the following business day (Rule 8.1 of the City Code). Where such dealing is for the account of non-discretionary clients, or is for the account of discretionary investment clients and is by an associate which is an exempt fund manager connected with the offeror or target, it need only be disclosed to the Panel. Public disclosures should be made on a dealing disclosure form available from the Panel.

The term "relevant securities" broadly means securities in the offeror or target.

The term "associate" in this context includes those persons who are interested in shares in either the offeror or the target company and who have an interest or potential interest, whether commercial, financial or personal, in the outcome of the offer.

An "exempt fund manager" is a person who manages investment accounts on a discretionary basis and is recognised as such by the Panel.

A "principal trader" is registered as a market-maker with the London Stock Exchange, is accepted by the Panel as a market-maker, or is a London Stock Exchange member firm dealing as principal in order book securities. An "exempt principal trader" is a trader recognised as such by the Panel.

2.4 Disclosure of Dealings by 1 Per Cent. Shareholders

Under Rule 8.3 of the City Code, any person (whether or not an offeror) who is interested, either directly or indirectly, in 1 per cent. or more of any class of relevant securities of either the target company, or an offeror, must report any dealings during the offer period in relevant securities of the target company, or (where shares are being offered as consideration) an offeror to a Regulatory Information Service (RIS) not later than 12.00 noon on the following business day and a copy of such disclosure must be faxed to the Panel. Public

disclosures should be made on a dealing disclosure form available from the Panel.

Two or more persons who act to acquire an interest in relevant securities pursuant to an agreement or understanding (whether formal or informal) will be deemed to be a single person for these purposes.

If a person manages investment accounts on a discretionary basis, he, and not the person on whose behalf the relevant securities are managed, will be treated as interested in the relevant securities concerned.

These requirements do not apply to recognised intermediaries acting in a client-serving capacity.

2.5 Disclosure of Irrevocable Undertakings and Letters of Intent

During an offer period, if an offeror or target or any of their associates procures an irrevocable undertaking to accept an offer or a letter of intent, the offeror or target (as appropriate) must disclose the details in writing to a Regulatory Information Service (RIS) with a faxed copy of such disclosure to the Panel (Rule 8.4(a) of the City Code). Disclosures must be made not later than 12.00 noon on the following business day.

2.6 Prohibited Dealings

An offeror and a person acting in concert with it must not deal as principal with an exempt principal trader connected with the offeror in relevant securities of the target company during the offer period (Rule 38.2 of the City Code).

As trading through SETS is anonymous, the Panel has ruled (1997/11 and Rule 4.2(b) of the City Code) that target securities must not be purchased through SETS by the offeror and connected persons and any purchases must be effected by negotiated dealings outside SETS.

2.7 Insider Dealing and Market Abuse

Both the offeror and the merchant bank will be prevented from making market purchases of the target's shares if they have inside information relating to the target's shares other than the fact that the offer is to be made. Under the insider dealing provisions contained in the Criminal Justice Act 1993, an individual may commit a criminal offence if he deals, or encourages another person to deal, in securities of a company on the basis of inside information which has not been made public and which, if made public, would significantly affect the price. For example, where the offeror has secured inside information about the target in negotiations with the target, or where an informal clearance has been secured from the relevant regulator of a utilities sector, market purchases would not be permissible until the particular item of information is made public.

The criminal offence of insider dealing is supplemented and extended by the new statutory regime of market abuse, Part VIII FSMA. Pursuant to FSMA, the FSA has powers to impose unlimited fines on individuals and firms which commit market abuse. FSMA identifies three types of behaviour as market abuse: (i) misuse of information; (ii) conduct which may mislead the market participants as to the supply, price or demand for investments; and (iii) conduct likely to distort the market.

Appendix 4
Important Thresholds of Shareholdings in Takeovers

The summary below is intended as a general checklist, but it should be noted that certain of the thresholds relate only to equity or voting shares, and may have to be applied separately to separate classes of shares. It should also be noted that in relation to Rule 5, Rule 9 and Rule 11 of the City Code, references to "shares" include having a long economic position in relation to such shares.

Percentage of shares or voting rights in target		Consequence
Any amount	-	must disclose upon request by target company (Section 793 of the Companies Act 2006)
	-	may be prohibited (Rule 5 of the City Code) or require a cash offer to be made for the target company (Rule 9 of the City Code) if it takes aggregate holding of shares to 30 per cent. or more or if additional to existing 30 per cent. holding
	-	if the acquiring company is listed on the London Stock Exchange the FSA's Listing Rules may require the acquiring company to obtain shareholders' consent (Class 1), or make an announcement (Class 2) (Chapter 10 of the Listing Rules)
	-	where company holds 30 per cent. or more but less than 50 per cent. of the ordinary shares in the target company any acquisition of ordinary shares in the target company which leads to percentage increase in shares with voting rights will lead to a requirement to make a cash offer (Rule 9 of the City Code)
	-	offeror and its associates must disclose dealings in shares during an offer period (Rule 8.1 of the City Code)
	-	if any shares acquired for cash during offer period, any offer must be in cash or accompanied by a cash alternative at not less than the highest price paid (Rule 11.1(b) of the City Code)
1 per cent.	-	must disclose dealings in shares during an offer period (Rule 8.3 of the City Code)

3 per cent.	-	must disclose holdings of voting rights to the target and the FSA (Chapter 5 of the FSA's Disclosure Rules and Transparency Rules)
	-	thereafter, if a person's percentage holding of voting rights increases or decreases through a 1 per cent. threshold (rounding down to the nearest whole percentage point), or ceases to be at least 3 per cent., this must be notified under DTR 5
5 per cent.	-	power of minority to apply to Court for cancellation of a resolution by public company to re-register as a private company (Section 98 of the Companies Act 2006)
10 per cent.	-	power of minority to block compulsory purchase (Section 979 of the Companies Act 2006)
	-	if the shares were acquired for cash during the 12 months prior to offer period and during offer period, any offer must be in cash or accompanied by cash alternative at not less than the highest price paid (Rule 11.1(a) of the City Code)
	-	if the shares were acquired in exchange for securities during the three months prior to offer period and during offer period, such securities must be offered as part of any offer (Rule 11.2 of the City Code)
15 per cent.	-	possible "merger" ("material influence") which can be referred to the Competition Commission
more than 25 per cent.	-	power of minority to block special resolutions or takeover by way of Scheme (although for practical purposes this blocking ability will arise with a smaller shareholding)
30 per cent.	-	may be prohibited dealing (Rule 5 of the City Code)
	-	possible requirement to bid for whole of target (Rule 9 of the City Code)
more than 50 per cent.	-	Companies Act subsidiary and legal control
	-	offer capable of becoming unconditional as to acceptances (Rule 10 of the City Code)
	-	City Code generally ceases to be applicable

75 per cent.	-	power to pass special resolutions
	-	stamp duty relief may be available for transactions between the members of the enlarged group (Section 42 of the Finance Act 1930)
	-	offeror will be able to de list the target company
	-	UK tax grouping possible
90 per cent.	-	UK merger relief may be available on share for share exchange (Section 612 Companies Act 2006)
	-	minorities may be entitled to require their holdings to be bought out, but note that this test is applied to each class of shares separately
90 per cent. of the shares and voting rights subject to the offer	-	power compulsorily to purchase minorities, but note that this test is applied to each class of shares separately

Appendix 5
Definition of "Persons Acting in Concert"

Note: references to the "offeree" mean the target.

For the purposes of the City Code "persons acting in concert" comprise persons who, pursuant to an agreement or understanding (whether formal or informal), co-operate to obtain or consolidate "control" (defined in the Definitions section of the City Code as meaning 30 per cent.) of a company or to frustrate the successful outcome of an offer for a company.

This includes, unless the contrary is established:-

A. a company, its parent, subsidiaries and fellow subsidiaries, and their associated companies, and companies of which such companies are associated companies, all with each other (for this purpose ownership or control of 20 per cent. or more of the equity share capital of a company is regarded as the test of associated company status);

B. a company with any of its directors (together with their close relatives and related trusts);

C. a company with any of its pension funds and the pension funds of any company covered in (A);

D. a fund manager (including an exempt fund manager) with any investment company, unit trust or other person whose investments such fund manager manages on a discretionary basis, in respect of the relevant investment accounts;

E. a connected adviser (defined in the Definitions section of the City Code to include, most importantly, an organisation which is advising the offeror or offeree in relation to the offer) with its client and, if its client is acting in concert with an offeror or with the offeree company, with that offeror or with that offeree company respectively, in each case in respect of the interests in shares of that adviser and persons controlling, controlled by or under the same control as that adviser (except in the capacity of an exempt fund manager or exempt principal trader); and

F. directors of a company which is subject to an offer or where the directors have reason to believe a ***bona fide*** offer for their company may be imminent.

In addition, a person and each of its affiliated persons will be deemed to be acting in concert all with each other. An "affiliated person" means any undertaking in respect of which that person:

i. has a majority of the shareholders' or members' voting rights;

ii. is a shareholder or member and at the same time has the right to appoint or remove a majority of the members of its board of directors;

iii. is a shareholder or member and alone controls a majority of the shareholders' or members' voting rights pursuant to an agreement entered into with the other shareholders or members; or

iv. has the power to exercise, or actually exercises, dominant influence or control.

For these purposes, a person's rights as regards voting, appointment or removal shall include the rights of any other affiliated person and those of any person or entity acting in its own name but on behalf of that person or of any other affiliated person.

Shareholders and their supporters and proposed directors who requisition or threaten to requisition the consideration of a board control-seeking proposal at a general meeting, will be presumed to be acting in concert once an agreement or understanding is reached between them (Note 2 on Rule 9.1). Accordingly, any purchase of shares by any member of the group could give rise to a mandatory offer obligation (see paragraph 1.5 of Appendix 3).

The above is the definition in the City Code of acting in concert.

The definition of acting in concert differs from what would for the purposes of DTR 5 be regarded as an agreement between two or more persons which may give rise to an obligation to disclose voting rights under that Chapter (see paragraph 2.2 of Appendix 3 above).

Many of the rules imposing obligations treat persons acting in concert as one person.

Appendix 6
Summary Offer Timetables

The timetable for an offer will differ depending on whether it is structured as a takeover offer or a scheme of arrangement. All time periods are in calendar days (not business days), unless otherwise indicated.

a. Takeover Offer

(assuming no competing offer and receipt of competition clearances prior to Day 39)

Day -28 to 0	Offeror announces offer	Rule 2.2	
Day 0	Offeror sends offer document to shareholders and persons with information rights		
Offeror sends prospectus (where applicable) to shareholders and persons with information rights	Rule 30.1		
Day 14	Latest date for target to send first defence document	Rule 30.2	H
Day 21	Earliest first closing date for acceptances	Rule 31.1	
First business day after first closing date (and all subsequent closing dates) (by 8.00 a.m.)	Announcement of acceptance levels and (if appropriate) extension of the offer		
Day 39	Latest date for target to publish material new information (e.g. profit forecast, material acquisition or disposal)	Rule 31.9	H
Day 42 (assuming first closing date is Day 21)	Acceptances can be withdrawn if offer is not then unconditional as to acceptances	Rule 34	H
Day 46	Latest date for offeror to send revised offer document	Rule 32.1	H

Day 60	1.00 p.m.: latest time by which acceptances can be received or purchases made	Rule 31.6(b)
	5.00 p.m.: latest time by which announcement of acceptances and purchases can be made, subject to extension with consent of Panel	Rule 31.6(c)
	Midnight: latest time by which offer may be declared unconditional as to acceptances, subject to extension with consent of Panel	Rule 31.6(a)
Day 74	Earliest date on which offer can close (assuming the offer became unconditional as to acceptances on Day 60)	Rule 31.4
Day 81 (assuming the offer became unconditional as to acceptances on Day 60)	All other conditions to the offer must be fulfilled	Rule 31.7
14 days after offer becomes unconditional in all respects	Last date for sending of consideration to target shareholders	Rule 31.8
H = normally only relevant in the case of a hostile bid		

b. Scheme of Arrangement

Day -28 to 0	Offeror and target announce offer	Rule 2.2
Between announcement and Day 0	Court hearing seeking directions for convening of shareholder meetings	Section 896 of the Companies Act 2006
Day 0	Target sends Scheme circular to shareholders and persons with information rights	
Offeror sends prospectus (where applicable) to shareholders and persons with information rights	Rule 30.1	

Day 7 (assuming shareholder meetings will be held on Day 21)	Latest date for revision to the terms of the Scheme (i.e. the offer)	
(NB: Where a Scheme is used, there is no end date for target to publish material new information – compare the Day 39 requirement for takeover offers)	Appendix 7, paragraph 7	
No earlier than Day 21	Shareholder meetings (Court meeting and general meeting of target shareholders) held to approve the Scheme and related resolutions	Appendix 7, paragraph 3
No earlier than around Day 40	Court hearing to grant order sanctioning the Scheme	Section 899 of the Companies Act 2006
Following business day		
(the "Effective Date")	Court order filed with the Registrar of Companies. The Scheme becomes effective once registration by the Registrar is complete	
Offeror acquires 100% control of the target		
End of offer period under the City Code		
	(NB: In the case of a Scheme, the City Code does not set a date by which all of the conditions to target offer must be fulfilled or satisfied)	
14 days after the Effective Date	Last date for sending consideration to target shareholders	Appendix 7, paragraph 10

Appendix 7
UK Merger Control Regime

1. Relevant Legislation	• Enterprise Act 2002
2. Competent authorities	• OFT: may initiate competition investigations of takeovers and has sole jurisdiction to clear or refer a merger to the Competition Commission (except in very limited circumstances as defined by statute). • Competition Commission: jurisdiction to take final decisions on substantive competition issues and remedies as regards mergers referred by the OFT (ibid.). • Secretary of State: may intervene in limited circumstances where merger raises defined 'public interest consideration' e.g. national defence. • Decisions of the OFT, CC and Secretary of State may be appealed to the Competition Appeal Tribunal.
3. Application	Merger control provisions apply where two or more enterprises have ceased to be distinct. Two enterprises cease to be distinct if they are brought under common ownership or control: • legal control (controlling interest) • de facto control (control of commercial policy) • material influence (ability to influence commercial policy).
4. Joint ventures	Joint ventures will fall within the criteria and thus qualify to be referred for investigation if they involve the coming under common control of previously distinct business activities (i.e. more than one shareholder has "control" in the defined sense).

5. Notification thresholds	Either the turnover in the UK of the enterprise to be acquired exceeds £70 million per annum (the "turnover test"); or the merging enterprises both supply goods or services of a particular description and as a result of the merger a 25% share of supply of goods or services is created or enhanced in the UK or a substantial part of the UK (the "share of supply" test)
6. Notification and sanctions	• Unlike the EC Merger Regulation there is no system of mandatory notification of mergers. In practice, most are notified on a voluntary basis. • No sanction for failure to notify consequently (although incurs the risk of subsequent investigation and remedies/prohibition).
7. Time-limits for notification	There is no requirement to notify and so no time-limit for notification. Timely notification is however recommended if notification is desirable.
8. Procedural time-frame and suspension requirements	• The OFT must refer a merger to the Competition Commission within four months of completion or the date at which the merger becomes public knowledge (whichever is later). • Exceptions to this where Merger Notice given to OFT or where been 'creeping merger' over period of two years. • Decision by the OFT takes 4-6 weeks typically. If Merger Notice form used, max. 30 working days. • No automatic suspension though if merger referred to the Competition Commission pre-closing there is an automatic prohibition on further share purchases or business implementation (subject to some exceptions).
9. Substantive test	• Substantial lessening of competition test under the Enterprise Act • Assessment by the Competition Commission is competition based - it is a detailed appraisal.
10. Enforcement	• The Enterprise Act gives the Competition Commission the authority to decide whether to clear, prohibit or impose remedies on a merger.

Appendix 8
National Merger Control in other EU and EFTA States

A brief summary of the basic jurisdictional tests and notification requirements of the national merger control regimes in the EU and EEA states is given below:-

Country	Trigger	Notification
Austria	• Combined worldwide turnover of €300m; and • Combined turnover in Austria of €30m; and • At least two parties each have worldwide turnover of €5m However, even if above thresholds are met, transaction is not notifiable if: • Only one of the parties has turnover of €5m within Austria; and • All other parties have combined worldwide turnover of less than €30m	Mandatory prior notification
Belgium	• Combined turnover in Belgium of €100m; and • At least two parties each have turnover in Belgium of €40m	Mandatory prior notification
Bulgaria	• Combined turnover in Bulgaria of BGN 25m (c. €12.8m); and • Either (1) at least two parties each have turnover in Bulgaria of BGN 3m (c. €1.5m); or (2) target has turnover in Bulgaria of BGN 3m (c. €1.5m)	Mandatory prior notification

Cyprus	• At least two parties each have worldwide turnover of €3.4m; and • At least one party carries on business in Cyprus; and • Combined turnover in Cyprus of €3.4m	Mandatory prior notification
Czech Republic	• Combined turnover in Czech Republic of CZK 1,500m (c. €60m); and • At least two parties each have turnover of CZK 250m in Czech Republic (c. €10m) *OR* • Target has turnover in Czech Republic of CZK 1,500m (c. €60m), and • At least one other party has worldwide turnover of CZK 1,500m (c. €60m)	Mandatory prior notification
Denmark	• Combined turnover in Denmark of DKK 3,800m (c. €509m); and • At least two parties each have turnover in Denmark of DKK 300m (c. €40m); *OR* • At least one undertaking has turnover in Denmark of DKK 3,800m (c. €500m); and • At least one other undertaking has worldwide turnover of DKK 3,800m (c. €500m)	Mandatory prior notification
Estonia	• Combined turnover in Estonia of EEK 100m (c. €6m); and • At least two parties each have turnover in Estonia of EEK 30m (c.€2m)	Combined turnover in Estonia of EEK 100m (c. €6m); and

Finland	• Combined worldwide turnover of €350m; and • At least two parties each have turnover in Finland of €20m	Mandatory prior notification
France	• Combined worldwide turnover of €150m; and • At least two parties each have turnover in France of €50m Special thresholds for: 1. Retail trade sector: Any concentration involving at least two parties operating one or several retail trade outlets in France is notifiable if: • Combined worldwide turnover of €75m; and • At least two parties each have turnover in France of €15m 2. DOMs and COMs: when at least one of the parties exercises all or part of its business in a Département d'Outre-Mer (French Guiana, Guadeloupe, Martinique or Réunion) or in a specified Collectivité d'Outre-Mer (Mayotte, Saint Pierre et Miquelon, Saint Martin or Saint Barthélemy) a concentration is notifiable if: • Combined worldwide turnover of €75m, and • At least two parties each have turnover in the DOM/COM of €15m	Mandatory prior notification

Germany	• Combined worldwide turnover of €500m; and • At least one party has turnover in Germany of €25m, and • At least one other party has turnover in Germany of €5m Exceptionally notification may not be necessary if: • There is an independent (non-affiliated) undertaking, merging with another undertaking, which has worldwide turnover of less than €10m; or • The only relevant market is a minor market where goods/services have been offered for at least five years and total annual value of less than €15m in last calendar year	Mandatory prior notification
Greece	Prior notification if: • Combined turnover of €150m worldwide, and • At least two parties each have turnover in Greece of €15m Post merger notification if: • Combined market share in relevant market of 10% in Greece, or • Combined turnover in Greece of €15m	Mandatory prior or post merger notification to Hellenic Competition Commission (depending on jurisdictional criteria)
Hungary	• Combined turnover of HUF 15,000m in Hungary (c. €60m); and • At least two parties each have turnover of HUF 500m (c. €2m) [in Hungary]	Mandatory prior notification

Iceland	• Combined turnover in Iceland of ISK 2,000 m (circa €14m); and • At least two parties each have turnover in Iceland of ISK 200 m (circa €1.4m)	Mandatory prior notification
Ireland	• At least two parties each have worldwide turnover of €40m; • At least two parties each carry on business in any part of the island of Ireland (i.e. including Northern Ireland) (See also NB1); and • At least one party has turnover in the Irish Republic of €40m	Mandatory prior notification to Competition Authority
Italy	• Combined turnover in Italy of €461m; or • Target has turnover in Italy of €46m *(Thresholds are revised annually to take account of inflation; above figures were revised in July 2009)*	Mandatory prior notification
Latvia	• Combined turnover (in Latvia) of LVL 25m (c. €35m); or • Combined market share in relevant market of 40% Exception: Merger notification may not be necessary if turnover of one of the parties does not exceed LVL 1.5 million (c. €2.1m)	Mandatory prior notification
Liechtenstein	No specific merger control regime	Not applicable
Lithuania	• Combined turnover of Lt 30m (c. €8.7m); and • At least two parties each have turnover of Lt 5m (c. €1.4m)	Mandatory notification
Luxembourg	No specific merger control regime	Not applicable

Malta	• Combined turnover in Malta of €2,329,373,40, and • Each of the undertakings concerned has turnover in Malta equivalent to at least 10% of parties' combined turnover	Mandatory prior notification
Netherlands	• Combined worldwide turnover of €113.45m; and • Each of at least two parties has turnover in the Netherlands of €30m	Mandatory prior notification
Norway	• Combined turnover in Norway of NOK 50m (c. €6m); and • At least two parties each have turnover in Norway of NOK 20m (c. €2.5m)	Mandatory prior notification
Poland	• Combined worldwide turnover of €1,000m; or • Combined turnover in Poland of €50m De minimis exemption: if target (in cases involving an acquisition of control, rather than a merger or JV) does not achieve turnover of more than €10m in Poland in any of the two financial years prior to notification	Mandatory prior notification
Portugal	• Combined turnover in Portugal of €150m; and • At least two parties each have turnover in Portugal of €2m *OR* • Creation or strengthening of combined market share in Portugal of 30% or more, or acquisition of target which has 30% market share (even if no overlap)	Mandatory prior notification

Romania	• Combined turnover of €10m; and • At least two parties each have turnover in Romania of €4m	Mandatory prior notification
Slovakia	• Combined worldwide turnover of €46m; and • At least two parties each have turnover in the Slovak Republic of €14m *OR* • At least one party has worldwide turnover of €46m; and • At least one other party has turnover in the Slovak Republic of €19m	Mandatory prior notification
Slovenia	• Combined turnover in Slovenia of €35m; *AND* • (i) Target has turnover in Slovenia of €1m; or • (ii) In cases of joint ventures of at least two parties, including affiliated companies, have turnover in Slovenia of €1m NB: If thresholds are not met, but parties to the concentration, together with the affiliated companies, have more than 60 % market share in the Slovenian market, the undertakings concerned are obliged to inform the CPO of the concentration (but not submit a formal notification).	Combined turnover in Slovenia of €35m;

Spain	• Combined turnover in Spain of €240m; and • At least two parties each have turnover in Spain of €60m *OR* • Creation or strengthening of combined market share in Spain of 30%, or acquisition of target which has 30% market share (even if no overlap)	Mandatory prior notification
Sweden	• Combined turnover in Sweden of SEK 1,000m (c. €104m); and • At least two parties each have turnover in Sweden of SEK 200m (c. €20.8m)	Mandatory prior notification. Voluntary notification may be submitted by the parties if only the first turnover threshold (SEK 1,000m) is met
United Kingdom	• Target has UK turnover of £70m (c. €88m) ('turnover test'); or • As a result of the transaction, parties have a share of supply of goods or services of any description of 25% or more in UK (or a substantial part of the UK) ('share of supply test')	Voluntary notification

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