



Update: Brexit to end UK Takeover Panel's role in EU 'shared jurisdiction' regime – what this means for affected issuers

What has happened? The UK's Takeover Panel (the Panel) has indicated that it intends to adopt its proposal to stop participating in the shared jurisdiction regime under the EU Takeover Directive after Brexit. The Panel sees this change as a natural consequence of the UK's decision to exit the EU. The result is that after Brexit the UK's Takeover Code will no longer apply to takeover offers for certain companies currently benefitting from the shared jurisdiction regime.

The shared jurisdiction regime requires certain issuer targets within the EU to have regulation of takeover offers for them divided between their relevant EU supervisory authorities. The regime currently applies to takeover offers for companies which have their registered office in one EU Member State and securities admitted to trading on a regulated market in another Member State (but not also in their registered office Member State).

If there is a 'no deal' Brexit with no delay, the change will take effect from 11pm on 29 March 2019. Unusually the Panel has not implemented the change immediately because its effective date (ie Brexit date) is uncertain. When the timing of Brexit is clearer, the Panel will formally make the change to the rules of the Code and announce that on its website.

Who is affected? Four groups of companies post Brexit:

1. Companies with their registered office in a Member State and their securities admitted to trading on a UK regulated market but not on a Member State regulated market
2. Companies with their registered office in the UK but who do not meet the UK residency test and their securities admitted to trading on a Member State regulated market but not on a UK regulated market
3. Companies with their registered office in the UK and who do meet the UK residency test - their central control and management is in the UK – but their securities admitted to trading on a Member State regulated market and not on a UK regulated market
4. Companies with their registered office in the UK and their securities admitted to trading both on a UK regulated market and on a Member State regulated market

The [public consultation paper](#) (on page 72) lists the 25 companies in group 1 and the 11 companies in groups 2 and 3 together (without distinguishing on the basis of residency).

What does this change mean for affected companies? The outcomes vary according to the rules of any relevant Member State's supervisory authority.

The UK's Takeover Code will no longer apply to offers for group 1 companies. The Panel has discussed the impact of the change with the supervisory authorities in the four Member States where currently any group 1 company is registered. The authorities in Cyprus, Luxembourg and The Netherlands have indicated that post Brexit, they will not have jurisdiction over offers for group 1 companies; by contrast, the Irish Takeover Panel has indicated that it will have full jurisdiction over such offers. The upshot is that group 1 companies with registered offices in Cyprus, Luxembourg or The Netherlands will be orphans as regards the supervision of offers.

The Panel will no longer regulate offers for group 2 companies but will fully regulate offers for group 3 companies and group 4 companies. Whether the relevant Member State will also regulate such offers depends on their local Member State rules so there will be scope for dual jurisdiction ie where offers are subject to overlapping regulation by both the Panel and a

Member State supervisory authority. In such cases, deal participants must consult early on with the Panel in order to obtain guidance on how any conflicts between the relevant rules may be resolved.

What should affected companies do now? The Panel's view is that current shared jurisdiction companies 'should, if appropriate, make clear to their shareholders the consequences of the company no longer falling within the Takeovers Directive's shared jurisdiction regime'. Also, where it is unclear whether the rules of the supervisory authorities of Member States would apply to offers for UK-registered but non-UK resident companies with securities listed on an EEA regulated market, those supervisory authorities should be consulted. See the [response statement](#) at pages 11-12.

What else can affected companies do? The Panel acknowledges that affected companies and their shareholders might prefer the UK's Takeover Code to continue to apply to them after Brexit but does not believe there is a compelling argument for amending the Takeover Code to achieve this. The Panel suggests companies wishing to retain the protections of the Takeover Code could do so by re-registering in the UK. If that does not appeal, many of the substantive provisions of the Takeover Code can be replicated in a company's articles, for example, mandatory bids for acquisitions in excess of 30%. However, what would be lost without re-registering in the UK, is access to an independent third party adjudicator able to make binding decisions in takeovers. This is perhaps the aspect of the Takeover Code of most value to those companies and shareholders currently benefitting from it.

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