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Pensions
The Takeover Code

Briefing

July 2017

Executive summary

The Code Committee of the Takeover Panel (Panel) (PCP 2012/2) as reported in our August 2012 and June 2013 briefings, made changes to the Code effective from May 20, 2013.

These key changes made were

- The offer document must include a statement of the bid company's intentions relating to
  - Employer contributions (including deficit reduction)
  - Benefit accrual
  - Admission of new members.
- Trustees to be afforded same rights as employee representatives and will
  - Receive bid information
  - Have the opportunity for their views to be published with the target company's board's circular.
- The Code does not apply to defined contribution schemes.

The Panel has made further changes to the Code since the June 2013 briefing.

The Takeover Code (Code)

The bidder should be required to state in the offer document its intentions with regard to the target company's pension scheme, but it does not need to include an assessment of the likely repercussions of its strategic plans on the scheme.

Any statements would be regarded as committing that party to that course of action for a period of 12 months from the date on which the offer period ends, or for such other period as is specified in the statement, unless there has been a material change in circumstances.

The Code also requires the bidder and the target company to make available to the trustees of the target company's pension scheme all the documents that they are currently required to make available to the target company's representatives. These documents include

- The announcement under which the offer period commences.
- The announcement of a firm intention to make an offer.
- The offer document.
- The target company board circular response to the offer document.
- The revised offer document.
- The target company board circular in response to any revised offer document.
- Any document required to be sent to shareholders in a target company and persons with information rights.

In addition, if new information is disclosed in any interviews or discussions with the media, the Panel may require an additional document to be sent to the trustees of the target's pension scheme setting out the new information.

The further changes to the Code introduce additional requirements for post offer undertakings by a party. Where a post offer undertaking is made, details of that offer must be set out by the offeror in the next such document it publishes. The Panel may also require the offer to be sent direct to the trustees. The offeror party must comply with the terms of the undertaking unless a qualification or condition applies. Failure to meet the terms of the undertaking for any other reason must be the subject of a public announcement unless the Panel decides otherwise. Not all undertakings or commitments are post offer undertakings. The Panel will decide, as it must be consulted in advance.

The board of the target company must append to its circular a separate opinion from the trustees of the target company's pension scheme on the effects of the offer on the pension scheme if it is received in sufficient time.

Under the Code, when the target company provides a copy of an announcement from the bidder which either commences an offer period or is an announcement of a firm intention to make an offer to the trustees of the target company's pension scheme, it must at the same time inform the trustees of the right to have their opinion noted when the target company's subsequent circular is published. This will also apply to revised offers.

The cost of providing this opinion will be met by the target company's pension scheme. As defined benefit schemes are funded by the sponsoring employers, ultimately the cost will be borne by these employers.

The suggestion that the Panel should be required to refer a takeover to the Pensions Regulator automatically if a definitive position has not been reached by a particular point in the offer timetable on the funding commitments in relation to the target company's pension scheme has still not been incorporated. This is because the Panel considered that sufficient protections already exist.

Comment

The amended Code is unlikely to have a major impact on bids and these further changes are minor.

The Code results in trustees receiving information, and an indication of the bidder's intentions towards the target company's pension scheme. In addition, unless there is a material change in circumstances, the bidder's statement of intention with regard to the target company's pension scheme is binding for a period of one year from the offer date, which will give comfort to scheme members.

The publication of the pension scheme trustees' view of the offer will provide them with a platform to air their views, but the impact it will have on shareholders will obviously depend on the circumstances of each bid.

Detailed due diligence in relation to the target's pension scheme may be required at an earlier stage in order to formulate a firm intention. Whilst early dialogue with the trustees would provide this, it is likely that, in practice, the bidder's statement as to its intentions in relation to the target's pension scheme will not be very detailed and may result in no more than the current status quo being maintained for a year.

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