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Practice Group(s):
AIM and Corporate

The Panel takes AIM

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On 15 May 2013, the Code Committee of the Takeover Panel published its response statement in connection with its public consultation paper from 5 July 2012 relating to "Companies subject to the Takeover Code" (PCP 2012/3). The revisions to the Takeover Code, which will take effect from 30 September 2013, represent a departure from the position proposed in the consultation and for most companies leave the Code largely unchanged.

However, the removal of the 'residency test' for AIM companies with registered offices in the UK, the Channel Islands or the Isle of Man will bring within the scope of the Code a large number of companies that previously fell outside it; this represents a significant change for those companies and for investors and participants in the AIM market, as well as potential bidders for AIM companies.

The Changes

The Code currently applies to all 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 United Kingdom (such as the Main Market of the London Stock Exchange) or on any stock exchange in the Channel Islands or the Isle of Man: however, this does not include AIM companies as AIM is not a regulated market.

For those public companies which have their registered offices in the UK, the Channel Islands or the Isle of Man but which are not listed on any of these exchanges, the Code currently includes a further test, the "residency test", which provides that the Code will only apply to such public companies if the Takeover Panel considers that the company's "*place of central management and control*" is located in the UK, the Channel Islands or the Isle of Man. It is this residency test that currently brings certain AIM companies into the scope of the Code.

Following the response statement, from 30 September 2013, the 'residency test' will be removed in relation to public companies which have their registered offices in the UK, the Channel Islands or the Isle of Man if their shares are admitted to trading on a multilateral trading facility (or MTF) in the UK (which includes AIM). This is an important change, as it will bring within the scope of the Code all AIM companies that had previously relied on having their 'place of central management and control' outside the UK. The revised rules will apply not only to new transactions from 30 September 2013 but also transactions in progress on that date.

The majority of the other changes that were proposed as part of the consultation were not included in the final response statement and this includes the proposal to remove the 'residency test' in relation to companies which have their registered offices in the UK, the Channel Islands or the Isle of Man but whose shares are listed on overseas exchanges (outside the EU), such as the New York Stock Exchange.

Conclusions

The removal of the 'residency test' in relation to UK AIM companies will remove the uncertainty that has long existed in relation to the applicability of the Code to such companies and in this respect will provide a welcome degree of clarity.

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However, AIM companies and their directors will now need to ensure that they are well prepared for the introduction of the new provisions on 30 September 2013, which will include understanding the scope of the obligations on both target companies and their boards under the Code and, importantly, getting in place the systems necessary to comply with those obligations. In addition, those AIM companies that previously included Takeover Code-style provisions in their constitutional documents should now consider updating them to avoid conflicts in the future.

K&L Gates was voted 'Law Firm of the Year' for Mid-Market M&A in 2012 by *Mergers & Acquisitions magazine* and has particular experience acting for AIM companies and offerors on public bids and advising them in relation to their obligations under the Code.

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