

# THE TAKEOVER PANEL

## CODE COMMITTEE

### **Instrument 2008/1**

#### **Asset valuations: Rules 29.1 and 29.2**

Pursuant to sections 942, 943 and 944 of the Companies Act 2006, and in exercise of the functions conferred on it by the Panel in paragraph 2 of its Terms of Reference, the Code Committee hereby makes this instrument containing rules.

The Takeover Code is amended, with effect from 4 April 2008, in accordance with the Appendix to this instrument.

In the Appendix, underlining indicates new text and striking through indicates deleted text.

**Made by Lindsay Tomlinson, Chairman, acting on behalf of the Code Committee.**

**4 March 2008**

## APPENDIX

### SECTION L. ASSET VALUATIONS

#### RULE 29

*NB All references in the Rule to “The Standards” are to the Royal Institution of Chartered Surveyors’ ~~Appraisal and~~ Valuation Standards.*

#### 29.1 VALUATIONS TO BE REPORTED ON IF GIVEN IN CONNECTION WITH AN OFFER

When a valuation of assets is given in connection with an offer, it should be supported by the opinion of a named independent valuer. (For the purposes of this Rule, “an independent valuer” means a valuer who meets the requirements of an “external valuer” as defined in ~~the Glossary to the Standards~~ and, in addition, has no connection with other parties to the transaction.)

##### (a) Type of asset

This Rule applies not only to land, buildings, ~~and process-plant and machinery equipment~~ but also to other assets, eg contracts, stocks, intangible assets ~~ships, TV rental contracts~~ and individual parts of a business. Where such other assets are involved, the Panel should be consulted in advance.

##### (b) The valuer

In relation to land, buildings, ~~and~~ ~~plant and machinery equipment~~, a valuer should be a corporate member of The Royal Institution of Chartered Surveyors or The Institute of Revenues Rating and Valuation or some other person approved by the Panel. In respect of other types of asset, the valuer should be an appropriately qualified person approved by the Panel. The valuer must be able to demonstrate that he meets any legal or regulatory requirements which apply in the circumstances in which the particular valuation is required and either:

(i) that he has, in respect of the particular type of property or asset, sufficient current local, national and international (as appropriate) knowledge of the particular market and the skills and understanding necessary to undertake the valuation competently; or

(ii) where he satisfies (i) above, except that he has insufficient current knowledge, that he will be or has been assisted by a person(s) who has/have such knowledge and the skills and understanding necessary to provide the assistance required by the valuer.

##### (c) In connection with an offer

In certain cases offer documents or defence circulars will include statements of assets reproducing directors’ estimates of asset values published with the company’s accounts in accordance with Schedule 7 Part I of the Companies Act 1985. The Panel will not regard such estimates as “given in connection with an

offer” unless asset values are a particularly significant factor in assessing the offer and the estimates are, accordingly, given considerably more prominence in the offer documents or circulars than merely being referred to in a note to a statement of assets in an appendix. In these circumstances, such estimates must be supported, subject to Rule 29.2(e), by an independent valuer in accordance with this Rule.

(d) Another party’s assets

A party to a takeover situation will not normally be permitted to issue a valuation, appraisal or calculation of worth of the assets owned by another party unless it is supported by the unqualified opinion of a named independent valuer and that valuer has had access to sufficient information to carry out a property valuation, appraisal or calculation of worth either in accordance with The Standards or, in respect of assets other than land, buildings, plant and equipment~~machinery~~, to appropriate standards approved by the Panel. Comments by one party about another party’s valuation, appraisal or calculation of worth of its own assets may be permitted in exceptional circumstances. In all cases, the Panel must be consulted in advance.

## 29.2 BASIS OF VALUATION

(a) The basis of valuation must be clearly stated. Only in exceptional circumstances should it be qualified and in that event the valuer must explain the meaning of the words used. Similarly, special assumptions (see PS 2.23 of The Standards) should not normally be made in a valuation but, if assumptions are permitted by the Panel, they should be fully explained. (See PS 6 Chapter 5 of The Standards.)

(b) In relation to valuations of land, buildings, ~~and~~ plant and equipment~~machinery~~, attention is drawn to The Standards.

~~(c) For non-specialised properties, the basis of valuation will normally be Market Value as defined in The Standards. Property which is occupied for the purposes of the business will be valued at existing use value. Where a property has been adapted or fitted out to meet the requirements of a particular business, the market value should relate to the property after the works have been completed. Alternatively, the market value may relate to the state of the property before the works had been commenced and the works of adaptation may be valued separately on a depreciated replacement cost basis, subject to adequate potential profitability. Specialised properties occupied by the business should be valued on a depreciated replacement cost basis, subject to adequate potential profitability. Properties held as investments or which are surplus to requirements and are held pending disposal should be valued at market value. If the company’s accounts are prepared under UK Generally Accepted Accounting Principles, with the consent of the Panel, the bases of valuation set out in UK PS 1.1 of The Standards may be used.~~

(d) In the case of land currently being developed or with immediate development potential, in addition to giving the ~~Market Value~~.....