



PCP 2015_3 Additional presumptions to the definition of acting in concert

ICAEW welcomes the opportunity to comment on *PCP 2015_3 Additional presumptions to the definition of acting in concert* published by the Code Committee of the Takeover Panel on 14 July 2015, a copy of which is available from this [link](#).

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MAJOR POINTS

1. We welcome the Code Committee's proposals to codify the existing practices of the Panel's Executive in relation to presumptions to the definition of 'acting in concert'. We also welcome the emphasis in the consultation paper that the presumptions can be rebutted by the persons concerned, in consultation with the Panel.

RESPONSES TO SPECIFIC QUESTIONS

Q1: Should the proposed new definition of "close relatives" be introduced?

2. We agree the proposed new definition should be introduced.

Q2: Should the proposed new presumption (5) of the definition of "acting in concert" in relation to close relatives be introduced?

3. We agree the proposed new presumption (5) should be introduced. It would be helpful if the Panel could confirm that the presumption includes trusts though not all vehicles that might be controlled by the named person as the latter are captured within 'affiliated persons' in the definition of 'acting in concert'.

Q3: Should presumptions (2) and (3) of the definition of "acting in concert", Rule 9.6, the Note on "Exempt fund manager" and "Exempt principal trader" and Note 1 on Rule 19.2 be amended as proposed?

4. We agree.

Q4: Should the proposed new presumption (6) of the definition of "acting in concert" in relation to companies founded by a member of a person's family be introduced?

5. We agree.

Q5: Should the proposed new presumption (9) of the definition of "acting in concert" in relation to shareholders in a private company be introduced?

6. We find that proposed new presumption (9) largely accords with practice. We think it would be helpful to include a Note which makes it clear that this would be the normal approach but that some cases, for example, a large number of private shareholders or shareholders with no common interest and/or conflicting interests with other shareholders who are able to rebut the presumption, would not necessarily be presumed by the Panel to be acting in concert.