

4. SCHEDULES*

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<ul style="list-style-type: none">All terms used in Schedules I, II, <u>III</u>, VI and VII have the meanings attributed to them by the <u>definitions of the Codes on Takeovers and Mergers (Tab 2) and all terms used in Schedule III have the meanings attributed to them by the Code on Share Repurchases (Tab 3)</u>	

SCHEDULE I

OFFER DOCUMENT FOR TAKEOVERS AND MERGERS ~~TRANSACTIONS~~

The offer document should contain the following statements in a prominent position:-

IMPORTANT

If you are in doubt as to any aspect of this offer, you should consult a stockbroker or other registered dealer in securities, a bank manager, solicitor, professional accountant, or other professional adviser.

If you have sold all your shares in you should at once hand this document and the accompanying form to the purchaser or to the bank or stockbroker or other agent through whom the sale was effected for transmission to the purchaser.

Except with the consent of the Executive, the document should include the following information:-

The Offeror

- (1) The name and address of the offeror and any financial adviser or other person ~~who may be acting for the offeror~~ making the offer on behalf of the offeror, and ~~of any person acting in the principal members of the offeror's concert group with any of them.~~ Unless otherwise agreed with the Executive, the offer document must contain a statement as to whether or not any securities acquired in pursuance of the offer will be transferred to any other persons, together with the names of the parties to any such agreement, arrangement or understanding and particulars of all securities in the offeree company held by such persons, or a statement that no such securities are held.
- (2) If either the offeror or any ~~person acting in concert~~ principal member of its concert group ~~with it~~ is a company, in respect of such companies the identity of the ultimate controlling shareholders, and the names of the directors and the directors of their ultimate parent companies, or where there is a listed company in the chain between such company and their ultimate parent companies, the directors of such listed company.

Intentions regarding the offeree company and its employees

- (3) (i) The offeror's intentions regarding the continuation of the business of the offeree company;

- (ii) the offeror's intentions regarding any major changes to be introduced in the business, including any redeployment of the fixed assets of the offeree company;
- (iii) the long-term commercial justification for the proposed offer; and
- (iv) the offeror's intentions with regard to the continued employment of the employees of the offeree company and of its subsidiaries.

Shareholdings and dealings

- (4.)
- (i) The shareholdings of the offeror in the offeree company;
 - (ii) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company in which directors of the offeror are interested;
 - (iii) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company which any persons acting in concert with the offeror own or control (with the names of such persons acting in concert);
 - (iv) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company owned or controlled by any persons who, prior to the posting of the offer document, have irrevocably committed themselves to accept or reject the offer, together with the names of such persons; and
 - (v) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company owned or controlled by a person with whom the offeror or any person acting in concert with the offeror has any arrangement of the kind referred to in Note 8 to Rule 22 of the Takeovers Code.

~~If in any of the above categories (i) – (iii) there are no shareholdings, this fact should be stated.~~

If in any of the above categories there are no shareholdings, this fact should be stated. This will not apply to categories (iv) or (v) if there are no such irrevocable commitments or arrangements.

If any party whose shareholdings are required by this paragraph 4 to be disclosed, including a party who has no shareholdings, has dealt for value in the shares in question during the period beginning 6 months prior to the offer period and ending with the latest practicable date prior to the posting of the offer document, the details, including dates and prices, must be stated. If no such dealings have taken place, this fact should be stated.

Notes:

1. *Relevant shareholdings*

References in this paragraph 4 to shareholdings should be taken to mean:

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(a) *in the case of shareholdings in the offeree company, holdings of:-*

(i) *securities which are being offered for or which carry voting rights;*

(ii) *convertible securities, warrants, options and derivatives in respect of (i); and*

(b) *in the case of shareholdings in the offeror company, holdings of:-*

(i) *equity share capital;*

(ii) *securities which carry substantially the same rights as any to be issued as consideration for the offer; and*

(iii) *convertible securities, warrants, options and derivatives in respect of (i) or (ii).*

2. *Options and derivatives*

Where holdings of options are disclosed, the exercise period and the exercise price must be given. Where dealings involving options are disclosed, the date of taking or granting the option, the number of securities under the option, the exercise period, the exercise price and any option money paid or received must be stated. The exercise of an option must also be disclosed; the date of exercise, the exercise price and any option money paid or received must be stated.

Where holdings of derivatives are disclosed, the number of reference securities to which they relate (when relevant), the maturity date and the reference price must be given. Where dealings involving derivatives are disclosed, the number of reference securities to which they relate, the date of entering into or closing out of the derivative, the maturity date and the reference price must be stated. In each case, full details must be given so that the nature of the holding or dealing can be fully understood.

3. *Meaning of “interested”*

References to directors being “interested” in shareholdings are interpreted in the manner described in Part III of the Securities (Disclosure of Interests) Ordinance [\(Cap. 396\)](#).

4. *Aggregation*

There may be cases where no useful purpose would be served by listing a large number of transactions. In such cases the Executive will accept in documents some measure of aggregation of dealings by a person provided that no significant dealings are thereby concealed.

~~*The Executive will normally require dealings during the period of 3 months prior to the announcement of the offer to be set out individually. Purchases and sales should not be netted off and the highest and lowest prices should be stated. A full list of all dealings should be sent to the Executive and should be made available for inspection. The following approach is normally acceptable:-*~~

~~*(i) for dealings during the offer period and the month prior to its commencement there should be no aggregation;*~~

~~*(ii) for dealings in the 2 months prior to that period, purchases and sales in that period can be aggregated on a daily basis; and*~~

~~*(iii) for dealings in the 3 months prior to that period, purchases and sales can be aggregated on a weekly basis.*~~

~~*Purchases and sales should not be netted off and the highest and lowest prices should be stated. A full list of all dealings should be sent to the Executive and should be made available for inspection.*~~

5. *Irrevocable commitments*

References to irrevocable commitments to accept or reject an offer must make it clear if there are circumstances in which they cease to be binding, for example, if a higher offer is made.

6. *Discretionary clients*

Shareholdings of the discretionary clients of fund managers connected with an offeror, unless they are exempt fund managers, and their dealings since the commencement of the offer period may be relevant and the Executive should be consulted.

Partial offer

~~(5.)~~ If applicable, ~~an explanation as to why the number of offeree shares it is proposed to acquire, together with any such shares beneficially owned by the persons specified in paragraph (4) hereof, is less than the total number of shares in issue.~~

In the case of a partial offer, the reasons for making a partial offer rather than a full offer.

Shares offered for and dividends

6. Precise particulars of the securities in respect of which the offer is made and a statement whether they are to be acquired cum or ex any dividend or other distribution which has been or may be declared.

6A. Whether, in the event of a person accepting the offer, the offeror will pay any stamp duty which that person will become liable to pay in respect of the transaction under the Stamp Duty Ordinance (Cap.117) or if the offeror will not so pay the stamp duty, the rate of the stamp duty that such person will become liable to pay in respect of the transaction under that Ordinance.

Conditions of offer

~~(7.)~~ The price or other consideration to be paid for the securities.

~~(8.)~~ All conditions ~~attached to acceptances of the offer~~ and in particular whether the offer is conditional upon acceptances being received in respect of a minimum number and the last day on which the offer can become unconditional as to acceptances. The offer document must include particulars of all documents required, and procedures to be followed, for acceptance of the offer.

~~(9.)~~ A statement whether or not the offeror intends to avail itself of any powers of compulsory acquisition.

Market prices of offeree company's and offeror's ~~shares~~ securities

~~(10.)~~ (a) The closing price on the Stock Exchange (or on a stock exchange where they are listed) of the securities of the offeree company which are the subject of the offer:--

(i) on the latest practicable date prior to publication of the document;

(ii) on the ~~latest~~ last business day immediately preceding the date of the initial announcement of the offer; and

(iii) at the end of each of the 6 calendar months preceding the date of the initial announcement.

If any of the securities are not so listed, any information available as to the number and price of transactions which have taken place during the preceding 6 months should be stated together with the source, or an appropriate negative statement.

(b) ~~¶~~The highest and lowest closing market prices with the relevant dates during the period between the start of the 6 months preceding the date of the initial announcement and the latest practicable date prior to the posting of the offer document.

(c) If any document issued by the offeror contains a comparison of the value of the offer with previous prices of the offeree company's securities, a comparison between the current value of the offer and the price of the offeree company's securities on the last business day prior to the commencement of the offer period must be prominently included, no matter what other comparisons are made.

Such information should also be provided for ~~shares~~securities of the offeror if the consideration for the offer involves such ~~shares~~ securities.

Resources for offer

(11.) Where the offer consists of, or includes, cash or any other assets except new securities to be issued by the offeror company, the offer document must include confirmation by a financial adviser or by another appropriate independent party that resources are available to the offeror sufficient to satisfy full acceptance of the offer.

Financial information

(12.) (a) In the case of a securities exchange offer the following information about the offeror:-

(i) for the last ~~5~~3 financial years for which the information has been published, turnover, net profit or loss before and after taxation, the charge for tax, extraordinary items, exceptional items, minority interests, the amount absorbed by dividends, and earnings and dividends per share;

(ii) a statement of the assets and liabilities as shown in the last published audited accounts;

(iii) a cash flow statement if provided in the last published audited accounts;

(iv) any other primary statement shown in the last published audited accounts;

- (iv) all material changes in the financial or trading position of the offeror subsequent to the last published audited accounts or a statement that there are no known material changes;
 - (vi) details relating to the items referred to in paragraph 12(a)(i) of this Schedule I above in respect of any interim statement or preliminary announcement made since the last published audited accounts; and
 - (vii) significant accounting policies together with any points from the notes to the relevant published accounts which are of major relevance to an appreciation of the figures information contained in paragraphs 12(a)(i) to (vi) of this Schedule I above.
- (b) Where, because of a change in accounting policy, figures are not comparable to a material extent, this should be disclosed and the approximate amount of the resultant variation should be stated.
- (c) All offer documents must contain a description of how the offer is to be financed and the source of the finance. The principal lenders or arrangers of such finance must be named. Where the offeror intends that the payment of interest on, repayment of or security for any liability (contingent or otherwise) will depend to any significant extent on the business of the offeree company, a description of the arrangements contemplated will be required. Where this is not the case, a negative statement to this effect must be made.

Notes:

1. Where the offeror is a subsidiary company

The Executive will normally look through unlisted subsidiaries in interpreting this paragraph 12 of Schedule I unless, with the approval of the Executive, the subsidiary in question is regarded as being of sufficient substance in relation to the group and the offer. Accordingly if the offeror is part of a group, information will normally be required on the ultimate holding company in the form of group accounts.

2. Further information requirements

If the offeror is not listed on the Stock Exchange, in addition to the above requirements, the Executive would normally expect it to include a general description of the business interests of the offeror and/or other person(s) concerned and details of those assets which the Executive considers may be relevant to the business of the offeree company.

3. Partial offers

Where the offer is a partial offer, the offer document must contain the information required under paragraph 12(a) of this Schedule I, whether the consideration is securities or cash.

Arrangements in connection with offer

(13.) Details of any benefit which will be given to any director of the offeree company as compensation for loss of office or otherwise in connection with the offer.

~~(14.) Details of any agreement or arrangement between the offeror and any of the directors of the offeree company or any other person which is conditional on the outcome of the offer or otherwise connected with the offer.~~

A statement as to whether or not any agreement, arrangement or understanding (including any compensation arrangement) exists between the offeror or any person acting in concert with it and any of the directors, recent directors, shareholders or recent shareholders of the offeree company having any connection with or dependence upon the offer, and full particulars of any such agreement, arrangement or understanding.

Takeovers Code obligations

(15.) A statement of the obligations of the offeror and the rights of the offeree company shareholders under Rules 15, 16, 17, and 19 and 20 of the Takeovers Code.

Further information in cases of securities exchange offers

The following additional information should be given by the offeror when it is offering its securities in exchange for the securities of the offeree company:

(16.) The nature and particulars of its business and its financial and trading prospects.

(17.) The date and country of its incorporation.

(18.) The address of its principal office in Hong Kong.

(19.) The authorised and issued share capital and the rights of the shareholders in respect of capital, dividends and voting.

(20.) Whether or not the ~~shares~~ securities being offered will rank pari passu with the existing issued ~~shares~~ securities of the offeror, and if not, a precise description of ~~how the~~ rights of the holders of the securities ~~shares, including as to ranking will rank~~ for dividends and capital.

- (21.) ~~The number~~ Details of shares issued and shares repurchased since the end of the last financial year of the offeror.
- (22.) Details of options, warrants and conversion rights affecting shares in the offeror.
- (23.) Details of any re-organisation of capital during the ~~two~~ 2 financial years preceding the date commencement of the offer period.
- (24.) Details of any bank overdrafts or loans, or other similar indebtedness, mortgages, charges, or guarantees or other material contingent liabilities of the offeror and any of its subsidiaries, or, if there are no such liabilities, a statement to that effect. Such details should be as of a date which is not more than 3 months preceding the latest practicable date prior to the posting of the document.
- (25.) Details of any material litigation to which the offeror is, or may become, a party.
- (26.) Details of every material contract entered into after the date 2 not more than two years before the date commencement of the offer period, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the offeror or any of its subsidiaries, including particulars of dates, parties, principal terms and conditions and any consideration passing to or from the offeror or any of its subsidiaries.
- (27.) How and when the documents of title to the securities will be issued.
28. Whether and in what manner the emoluments of the directors of the offeror will be affected by the acquisition of the offeree company or by any other associated transaction. If there will be no effect, this must be stated.

Note:

Commissions etc.

Information given under this paragraph 28 should include any alterations to fixed amounts receivable or, as far as practicable, the effect of any factor governing commissions or other variable amounts receivable. Grouping or aggregating the effect of the transaction on the emoluments of several or all of the directors will normally be acceptable.

29. The effect of full acceptance of the offer upon the offeror's assets, liabilities, profits and business which may be significant for a proper appraisal of the offer. This does not require a profit forecast to be made.

Estimated value of unlisted paper consideration

30. When the offer involves the issue of unlisted securities, an estimate of the value of such securities by an appropriate adviser, together with the assumptions and methodology used in arriving at the value.

No set-off of consideration

31. A statement to the effect that settlement of the consideration to which any shareholder is entitled under the offer will be implemented in full in accordance with the terms of the offer without regard to any lien, right of set-off, counterclaim or other analogous right to which the offeror may otherwise be, or claim to be, entitled against such shareholder.

Note:

Consent to set-off

The Executive would only grant consent to an offeror to set-off consideration where a shareholder consents to such set-off or in exceptional circumstances.

Arrangements in relation to dealings

32. Any arrangements of the kind referred to in the third paragraph of Note 8 to Rule 22 of the Takeovers Code which exist between the offeror, or any person acting in concert with the offeror, and any other person; if there are no such arrangements, this should be stated. If the directors of the offeror or their financial advisers are aware of any such arrangements between any other associate of the offeror and any other person, such arrangements must also be disclosed.

SCHEDULE II

OFFEREE BOARD CIRCULAR FOR TAKEOVERS AND MERGERS TRANSACTIONS

The offeree board circular should include the following information:-

Views of offeree board

- (1.) ~~The names of~~ Whether the directors of the offeree company and whether they recommend that the shareholders should accept or reject the offer, or a statement that the directors ~~do not wish~~ are unable to make a recommendation (with reasons for the recommendation or for making no recommendation). A copy of the written advice of the offeree company's financial advisers must also be given.

Notes:

1. *When a board has effective control*

A board whose shareholdings confer control over a company which is the subject of an offer must carefully examine the reasons behind the advice it gives to shareholders and must be prepared to explain its decisions publicly. Shareholders in companies which are effectively controlled by the directors must accept that in respect of any offer the attitude of their board will be decisive.

2. *Split boards*

If the board of the offeree company is split in its views on an offer, the directors who are in a minority should also publish their views. The Executive will normally require that these views be circulated by the offeree company.

3. *Conflicts of interest*

Where a director has a conflict of interest, he should not normally be joined with the remainder of the board in the expression of its views on the offer, and the nature of the conflict should be clearly explained to shareholders.

4. *Financial adviser's consent*

~~*If an offeree board circular includes a recommendation or an opinion of a financial adviser for or against acceptance of the offer, the circular must, unless issued by the financial adviser in question, include a statement that the financial adviser has given and not withdrawn his consent to the issue of the circular with the inclusion of*~~

his recommendation or opinion in the form and context in which it is included.

5. Management buy-outs

If the offer is a management buy-out or similar transaction, a director will normally be regarded as having a conflict of interest where it is intended that he should have any continuing role (whether in an executive or non-executive capacity) in either the offeror or offeree company in the event of the offer being successful.

6. Views of the board on the offeror's plans for the company and its employees

The board of the offeree company should, insofar as relevant, comment upon the statements in the offer document regarding the offeror's intentions in respect of the offeree company and its employees.

Shareholdings and dealings

- (2.)
- (i) The shareholdings of the offeree company in the offeror;
 - (ii) the shareholdings in the offeree company and in the offeror in which directors of the offeree company are interested;
 - (iii) the shareholdings in the offeree company and (in the case of a securities exchange offer only) in the offeror owned or controlled by a subsidiary of the offeree company, by a pension fund of the offeree company or of a subsidiary of the offeree company, or by an adviser to the offeree company as specified in class (2) of the definition of associate but excluding exempt principal traders;
 - (iv) the shareholdings in the offeree company and (in the case of a securities exchange offer only) in the offeror owned or controlled by a person who has an arrangement of the kind referred to in Note 8 to Rule 22 [of the Takeovers Code](#) with the offeree company or with any person who is an associate of the offeree company by virtue of classes (1), (2), (3) and (4) of the definition of associate;
 - (v) except with the consent of the Executive, the shareholdings in the offeree company and (in the case of a securities exchange offer only) in the offeror which are managed on a discretionary basis by fund managers (other than exempt fund managers) connected with the offeree company (the beneficial owner need not be named); and
 - (vi) whether the directors of the offeree company intend, in respect of their own beneficial shareholdings, to accept or reject the offer.

If in any of the above categories, other than [category](#) (v), there are no shareholdings, then this fact should be stated. This will not apply to [category](#) (iv) above if there are no such arrangements.

If any person whose shareholdings are required by [categories](#) (i) or (ii) above to be disclosed (whether there is an existing holding or not) has dealt for value in the shares in question during the period beginning 6 months prior to the offer period and ending with the latest practicable date prior to the posting of the offeree board circular, the details, including dates and prices, must be stated.

If any person whose shareholdings are required by [categories](#) (iii), (iv) or (v) above to be disclosed (whether there is an existing holding or not) has dealt for value in the shares in question during the offer period and ending with the latest practicable date prior to the posting of the offeree board circular, the details, including dates and prices, must be stated.

In all cases, if no such dealings have taken place this fact should be stated.

Notes:

~~(See also Notes to paragraph (4) of Schedule I which apply equally to this paragraph (2) of Schedule II.)~~

1. When directors resign

When, as part of the transaction leading to an offer being made, some or all of the directors of the offeree company resign, the foregoing requirements of this paragraph ~~(2)~~ of Schedule II apply to them and their shareholdings and dealings must be disclosed in the offeree board circular in the usual way.

2. Arrangements in relation to dealings

The circular from the offeree board advising shareholders on an offer, whether recommending acceptance or rejection of the offer, must disclose any arrangements of the kind referred to in the third paragraph of Note 8 to Rule 22 of the Takeovers Code which exist between the offeree company, or any person who is an associate of the offeree company by virtue of classes (1), (2), (3) or (4) of the definition of associate, and any other person; if there are no such arrangements, this should be stated. If the directors or their financial advisers are aware of any such arrangements between any other associate of the offeree company and any other person, such arrangements must also be disclosed.

3. Notes to paragraph 4 of Schedule I

The Notes to paragraph 4 of Schedule I apply equally to this paragraph 2 of Schedule II.

Share capital of offeree company

- (3.) The authorised and issued share capital and the rights of the shareholders in respect of capital, dividends and voting.
- (4.) The number of shares issued since the end of the last financial year of the offeree company.
- (5.) Details of options, warrants and conversion rights affecting shares in the offeree company.

Financial information

- (6.) (a) The following information about the offeree company:-
 - (i) for the last 53 financial years for which the information has been published, turnover, net profit or loss before and after taxation, the charge for tax, extraordinary items, exceptional items, minority interests, the amount absorbed by dividends, and earnings and dividends per share;
 - (ii) a statement of the assets and liabilities shown in the last published audited accounts;
 - (iii) a cash flow statement if provided in the last published audited accounts;
 - (iv) any other primary statement shown in the last published audited accounts;
 - (iv) all material changes in the financial or trading position or prospects of the offeree company subsequent to the last published audited accounts or a statement that there are no known material changes;
 - (vi) details relating to items referred to in paragraph 6(a)(i) of this Schedule II above in respect of any interim statement or preliminary announcement made since the last published audited accounts; and
 - (vii) significant accounting policies together with any points from the notes to the relevant published accounts which are of major relevance to an appreciation of the figures information contained in paragraphs 6(a)(i) to (vi) of this Schedule II above.

(b) Where, because of a change in accounting policy, figures are not comparable to a material extent, this should be disclosed and the approximate amount of the resultant variation should be stated.

(7.) Details of any bank overdrafts or loans, or other similar indebtedness, mortgages, charges, or guarantees or other material contingent liabilities of the offeree company and any of its subsidiaries, or, if there are no such liabilities, a statement to that effect. Such details should be as of a date which is not more than 3 months preceding the latest practicable date prior to the posting of the document.

(8.) Details of any material litigation to which the offeree company is, or may become, a party.

Material contracts

(9.) Details of every material contract entered into not after the date 2 more than two years before the date commencement of the offer period, not being a contract entered into in the ordinary course of business carried on or intended to be carried on by the offeree company or any of its subsidiaries, including particulars of dates, parties, principal terms and conditions and any consideration passing to or from the offeree company or any of its subsidiaries.

Arrangements affecting directors

(10.) Details of any benefit to be given to any director of the offeree company as compensation for loss of office or otherwise in connection with the offer.

(11.) Details of any agreement or arrangement between any director of the offeree company and any other person which is conditional on or dependent upon the outcome of the offer or otherwise connected with the offer.

(12.) Details of any material contract entered into by the offeror in which any director of the offeree company has a material personal interest.

Directors' service agreements

(13.) Details of any service contracts with the offeree company or any of its subsidiaries or associated companies in force for directors of the offeree company which have more than 12 months to run, or which If any contracts have been entered into or amended within 6 months before the announced commencement of the offer period, particulars must be given in respect of the earlier contracts (if any) which have been replaced or amended as well as in respect of the current contracts. If there have been none, this should be stated.

Notes:

1. *Particulars to be disclosed:-*

- (a) *the name of the director under contract;*
- (b) *the expiry date of the contract;*
- (c) *the amount of fixed remuneration payable under the contract, excluding arrangements for pension payments; and*
- (d) *the amount of any variable remuneration payable under the contract (e.g. commission on profits) with details of the formula for calculating such remuneration.*

Where there is more than one contract, a statement of the aggregate remuneration payable is normally regarded as fulfilling the requirements under (c) of this Note above, except to the extent that this method would conceal material anomalies which ought to be disclosed (e.g. because one director is remunerated at a very much higher rate than the others). In cases where contracts have been replaced or amended, however, the particulars of remuneration payable under both the existing and the earlier contracts must relate to each individual separately.

2. *Recent increases in remuneration*

The Executive will regard as an amendment to a service contract any case where the remuneration of an offeree company director (with a service contract with more than 12 months to run) is increased materially within 6 months of the date of the offeree board circular. Therefore, any such material increase must be disclosed in the offeree board circular and the current and previous levels of remuneration stated.

SCHEDULE III

OFFER DOCUMENT FOR SHARE REPURCHASES BY GENERAL OFFER

The offer document should contain in a prominent position the following statements:-

IMPORTANT

If you are in doubt as to any aspect of this offer, you should consult a stockbroker or other registered dealer in securities, a bank manager, solicitor, professional accountant, or other professional adviser.

If you have sold all your shares in you should at once hand this document and the accompanying form to the purchaser or the bank or stockbroker or other agent through whom the sale was effected for transmission to the purchaser.

The offer document should include the following information:-

The offeror

1. The date when the document is despatched, the name and address of the offeror and any financial adviser or other person making the offer on behalf of the offeror, and the principal members of the offeror's concert group.

Intentions of offeror

2. The offeror's intention, if any, to rely upon section 168B of the Companies Ordinance (Cap. 32) or any comparable provision of applicable company law.
3. The offeror's intention, if any, to continue to meet the public float requirements of Rule 8.08 of the Listing Rules.

Intentions of potential new controlling shareholder

4. The Takeovers Code implications of the proposed share repurchase and, if the repurchase could result in a change of control, as that term is defined in the Takeovers Code, the intentions of the potential new controlling shareholder(s) as regards:-

- (a) the continuation of the business of the offeror;
- (b) any major changes to be introduced to the offeror's business, including any redeployment of fixed assets; and
- (c) the continued employment of the employees of the offeror and its subsidiaries.

Shareholdings and dealings

5. (i) The shareholdings in the offeror in which directors of the offeror are interested;
- (ii) the shareholdings in the offeror in which any persons acting in concert with the directors of the offeror are interested (with the names of such persons acting in concert);
- (iii) the shareholdings in the offeror in which any persons who, prior to the posting of the offer document, have irrevocably committed themselves to accept or reject the offer are interested, together with the names of such persons; and
- (iv) the shareholdings of each shareholder of the offeror which holds 10% or more of the voting rights of the offeror;

and the percentage which such numbers represent of the offeror's outstanding share capital and the identity of each such person.

If in any of the above categories there are no shareholdings, this fact should be stated. This will not apply to categories (iii) or (iv) if there are no such irrevocable commitments or shareholders.

If any party whose shareholdings are required by this paragraph 5 to be disclosed, including a party who has no shareholdings, has dealt for value in the shares in question during the period beginning 6 months prior to the offer period and ending with the latest practicable date prior to the posting of the offer document, the details, including dates and prices, must be stated. If no such dealings have taken place, this fact should be stated. This will not apply to category (iv) above.

Notes:

1. Relevant shareholdings

References in this paragraph 5 to shareholdings should be taken to mean holdings of:-

(i) securities which are being offered for or which carry voting rights; and

(ii) convertible securities, warrants, options and derivatives in respect of (i).

2. Notes to paragraph 4 of Schedule I

Notes 2 to 6 to paragraph 4 of Schedule I apply equally to this paragraph 5 of Schedule III.

6. Where known after reasonable inquiry, the intentions of each of the persons referred to in paragraph 5 of this Schedule III as regards acceptance of the offer including the number of shares to be tendered to the offer by each such person and the percentage which such number represents of their entire holdings. If such intentions cannot be determined after reasonable inquiry, a statement to such effect.
7. Assuming the offer is successful, the effect which the offer will have on the percentage voting rights of the persons referred to in paragraph 5 of this Schedule III.

Partial offer

8. The reasons for the proposed share repurchase and for the number of shares proposed to be repurchased.
9. In the case of a partial offer the pro rating and odd lot procedures of the offer.

Shares offered for and dividends

10. Particulars of the class and number of shares to be repurchased and a statement as to whether the shares to be repurchased are to be acquired cum or ex any dividend or other distribution which has been or may be declared.

Conditions of offer

11. The consideration to be offered for the shares.
12. All conditions of the offer and in particular whether the offer is conditional upon acceptances being received in respect of a minimum number and the last day on which the offer can become unconditional as to acceptances. The offer document must include particulars of all documents required, and procedures to be followed, for acceptance of the offer.

Market prices of shares

13. (a) The closing price on the Stock Exchange (or on a stock exchange where they are listed) of the shares which are the subject of the offer:-
 - (i) on the latest practicable date prior to publication of the document;
 - (ii) on the last business day immediately preceding the date of the initial announcement of the offer;
 - (iii) at the end of each of the 6 calendar months preceding the date of the initial announcement; and
 - (iv) if any of the shares are not so listed, any information available as to the number and price of transactions which have taken place during

the preceding 6 months should be stated together with the source, or an appropriate negative statement.

(b) The highest and lowest closing market prices with the relevant dates during the period between the start of the 6 months preceding the date of the initial announcement and the latest practicable date prior to the posting of the offer document.

(c) If any document issued by the offeror contains a comparison of the value of the offer with previous prices of the offeree company's shares, a comparison between the current value of the offer and the price of the offeree company's shares on the last business day prior to the commencement of the offer period must be prominently included, no matter what other comparisons are made.

Resources for offer

14. Where the offer is in cash, or includes an element of cash, confirmation by a financial adviser or by another appropriate independent party that resources are available to the offeror sufficient to satisfy full acceptance of the offer.

15. A description of how the offer is to be financed and the source of the finance. If funds are to be raised or borrowed for such purpose, the terms and conditions of such arrangements and the names of the principal lenders or arrangers of such finance.

Financial information

16. (a) The following information about the offeror:-

(i) for the last 3 financial years for which the information has been published, turnover, net profit or loss before and after taxation, the charge for tax, extraordinary items, exceptional items, minority interests, the amount absorbed by dividends, and earnings and dividends per share;

(ii) a statement of the assets and liabilities as shown in the last published audited accounts;

(iii) a cash flow statement if provided in the last published audited accounts;

(iv) any other primary statement shown in the last published audited accounts;

(v) all material changes in the financial or trading position of the offeror subsequent to the last published audited accounts or a statement that there are no known material changes;

(vi) details relating to the items referred to in (i) of this paragraph 16(a) in respect of any interim statement or preliminary announcement made since the last published audited accounts; and

(vii) significant accounting policies together with any points from the notes to the relevant published accounts which are of major relevance to an appreciation of the information contained in (i) to (vi) of this paragraph 16(a).

(b) Where, because of a change in accounting policy, figures are not comparable to a material extent, this should be disclosed and the approximate amount of the resultant variation should be stated.

17. The nature and particulars of its business and its financial and trading prospects.

18. Details of any bank overdrafts or loans, or other similar indebtedness, mortgages, charges, or guarantees or other material contingent liabilities of the offeror and any of its subsidiaries, or, if there are no such liabilities, a statement to that effect. Such details should be as of a date which is not more than 3 months preceding the latest practicable date prior to the posting of the document.

19. Details of any material litigation to which the offeror is, or may become, a party.

20. The effect which the share repurchase will have on the offeror's earnings per share, net assets per share, liabilities and working capital and, if materially adverse, an explanation of how such effects will be addressed or an appropriate negative statement.

Share capital

21. The authorised and issued share capital and the rights of the shareholders in respect of capital, dividends and voting.

22. Details of shares issued and shares repurchase since the end of the last financial year of the offeror.

23. Details of options, warrants and conversion rights affecting shares in the offeror.

24. Details of any re-organisation of capital during the 2 financial years preceding the commencement of the offer period.

25. The number and price of shares of the offeror that were repurchased by the offeror during the 12 month period immediately preceding the date of the offer document and the dates on which such repurchases were made.

26. If any shares of the class of shares to be repurchased were issued during the 2 year period immediately preceding the date of the offer, the date of such distribution, the issue price per share and the aggregate proceeds received by the offeror.

27. The frequency and amount of dividends that have been paid out by the offeror to holders of shares proposed to be repurchased during the 2 year period immediately preceding the date of the offer document together with a description of the offeror's ability to pay dividends, and any plan or intention to declare a dividend or alter a dividend policy.

Code obligations

28. A statement of the obligations of the offeror and the rights of the shareholders under Rules 15, 16, 17, 19 and 20 of the Takeovers Code.

SCHEDULE III

OFFER DOCUMENT FOR GENERAL OFFER SHARE REPURCHASE TRANSACTIONS

The offer document should contain in a prominent position the following statements:

IMPORTANT

~~If you are in doubt as to any aspect of this offer, you should consult a stockbroker or other registered dealer in securities, a bank manager, solicitor, professional accountant, or other professional adviser.~~

~~If you have sold all your shares in you should at once hand this document and the accompanying form to the purchaser or the bank or stockbroker or other agent through whom the sale was effected for transmission to the purchaser.~~

The offer document should include the following information:

- ~~1. The name and address of the offeror.~~
- ~~2. The name, address and business of any person acting for or on behalf of the offeror for the purpose of effecting a share repurchase.~~
- ~~3. Particulars of the class and number of shares to be repurchased and the consideration to be offered therefor together with a statement as to whether the shares to be repurchased are to be acquired cum or ex any dividend or other distribution which has been or may be declared.~~
- ~~4. Conditions attached to the offer.~~

- ~~5. Relevant time periods including the date on which the share repurchase will commence and, if applicable, the latest day on which the offeror can declare the offer unconditional.~~
- ~~6. Withdrawal rights.~~
- ~~7. Method and time for payment of consideration.~~
- ~~8. In the case of a partial bid the pro-rating and odd lot implications of the offer as per Rule 1.~~
- ~~9. The source of funds to be used for payment of the consideration offered for repurchased shares and, if funds are to be raised or borrowed for such purpose, the terms and conditions of such arrangements.~~
- ~~10. Where the offer is in cash, or includes an element of cash, confirmation by a financial adviser or by another appropriate independent party that resources are available to the offeror sufficient to satisfy full acceptance of the offer.~~
- ~~11. The reasons for the proposed share repurchase.~~
- ~~12. The number of securities beneficially owned by:
 - ~~(a) each director of the offeror; and~~
 - ~~(b) if known, each shareholder of the offeror which holds 10% or more of the voting rights of the offeror;~~and the percentage which such numbers represent of the offeror's outstanding share capital and the identity of each such person.~~
- ~~13. Where known after reasonable inquiry, the intentions of each of the persons referred to in paragraph 12 as regards acceptance of the offer including the number of securities to be tendered to the offer by each such person and the percentage which such number represents of their entire holdings. If such intentions cannot be determined after reasonable inquiry, a statement to such effect.~~
- ~~14. Assuming the offer is successful, the effect which the offer will have on the percentage voting rights of the persons referred to in paragraph 12 of this Schedule.~~
- ~~15. The Takeovers Code implications of the proposed share repurchase and, if the repurchase could result in a change of control, as that term is defined in the Takeovers Code, the intentions of the potential new controlling shareholder(s) as regards:
 - ~~(a) the continuation of the business of the offeror company;~~~~

- ~~(b) any major changes to be introduced to the offeror's business, including any redeployment of fixed assets; and~~
- ~~(c) the continued employment of the offeror's employees.~~
- ~~16. The offeror's intention, if any, to rely upon section 168B of the Companies Ordinance (Cap. 32) or any comparable provision of applicable company law.~~
- ~~17. The offeror's intention, if any, to continue to meet the public float requirements of Rule 8.08 of the Listing Rules.~~
- ~~18. The highest and lowest closing prices on the Stock Exchange for the shares to be repurchased, with relevant dates, for each month during the twelve month period immediately preceding the announcement in relation to the proposed share repurchase.~~
- ~~19. The closing prices on the Stock Exchange for the shares to be repurchased:
 - ~~(a) on the last business day immediately preceding the date of the announcement in relation to the proposed share repurchase;~~
 - ~~(b) on the latest practicable date immediately preceding the date of publication of the offer document; and~~
 - ~~(c) on the last business day of each of the twelve calendar months immediately preceding the date of the announcement in relation to the proposed share repurchase.~~~~
- ~~20. If any shares of the class of shares to be repurchased were issued during the two year period immediately preceding the date of the offer, the date of such distribution, the issue price per share and the aggregate proceeds received by the offeror.~~
- ~~21. The number and price of shares of the offeror that were repurchased by the offeror during the 12 month period immediately preceding the date of the offer document and the dates on which such repurchases were made.~~
- ~~22. Summaries of the offeror's audited annual accounts or consolidated accounts, as appropriate, for its two most recently completed financial years together with any interim accounts published during the current financial year prior to the date of the offer document and the corresponding interim accounts for the previous year. Copies of all such accounts should be made available for inspection by shareholders throughout the offer period.~~
- ~~23. General information on the trend of the business of the offeror since the date to which the offeror's most recent audited accounts are made up.~~

- ~~24. Description as to the financial and trading prospects of the offeror for at least its current financial year together with any material information in relation thereto including material changes in the offeror's financial or trading position since publication of its most recent audited annual accounts or consolidated accounts.~~
- ~~25. The effect which the share repurchase will have on the offeror's earnings per share, net assets per share, liabilities and working capital and, if materially adverse, an explanation of how such effects will be addressed or an appropriate negative statement.~~
- ~~26. The frequency and amount of dividends that have been paid out by the offeror to holders of shares proposed to be repurchased during the two year period immediately preceding the date of the offer document together with a description of the offeror's ability to pay dividends, and any plan or intention to declare a dividend or alter a dividend policy.~~
- ~~27. The availability for inspection during the offer period of material documents including any valuation of property assets required by Rule 6; any document evidencing an irrevocable commitment to accept or reject the offer; and documentation in relation to financing arrangements required to facilitate the offer including the names of lenders.~~
- ~~28. If some or all of the property assets of the offeror have been the subject of an independent valuation within the twelve month period immediately preceding the date of the offer document, a summary of such valuation and a copy of the valuation should be filed with the Executive and the Stock Exchange along with the offer document and should be made available for inspection by shareholders during the offer period. The offer document should also include a statement that the valuer has given and not withdrawn his consent to the publication of his name and the references to his report in the context in which it appears.~~
- ~~29. Any profit forecast that has been made by an offeror prior to the commencement of the offer if such forecast is still in effect on the date the offer is announced, and such forecast must be examined, repeated and reported on in the offer document.~~

SCHEDULE IV

PARTS III AND IV AND SCHEDULE 2 OF THE SECURITIES AND FUTURES COMMISSION (FEES) RULES

PART III

FEES RELATING TO TAKEOVERS, MERGERS AND SHARE REPURCHASES

5. Interpretation (Part III)

In this Part –

“circular” means a document required to be filed with the Executive in connection with an off-market share repurchase in accordance with the Share Repurchase Code;

“the Codes” means the Share Repurchase Code and the Takeovers Code;

“the Executive” means the Executive Director of the Corporate Finance Division of the Commission and any delegate of the Executive Director;

“offer document” means a document required to be filed with the Executive in connection with an offer in accordance with the Takeovers Code or a general offer in accordance with the Share Repurchase Code;

“offeree company” means a company for which an offer is made in accordance with the Takeovers Code;

“the Panel” means the committee of the Commission known as the Takeovers and Mergers Panel;

“relevant share capital” in relation to a company, means shares of any class comprised in its equity share capital and securities which carry a right to subscribe to or purchase such shares;

“ruling” includes a waiver, consent, confirmation, decision or other determination, made under either of the Codes by the Executive, the Panel or the Takeovers Appeal Committee;

“the Share Repurchase Code” means the Code on Share Repurchases, published by the Commission and as amended from time to time;

“the Takeovers Appeal Committee” means the committee of the Commission known as the Takeovers Appeal Committee;

“the Takeovers Code” means the Code on Takeovers and Mergers, published by the Commission and as amended from time to time.

6. Fees relating to offer documents and circulars

(1) The filing with the Executive of an offer document or a circular shall be accompanied by a fee the amount of which shall be determined in accordance with the provisions of this section.

(2) The amount of the fee payable under subsection (1) shall be the amount

specified in column 2 of Schedule 2 opposite such value in column 1 of that Schedule as is equivalent –

- (a) in the case of an offer document, to the value of the offer contained in it or, where the offer document contains alternative offers to the same offeree company or 2 or more offers of different values to different offeree companies, to the value of the offer which has the lower or lowest value; or
 - (b) in the case of a circular, to the value of the offer contained in it.
- (3) Where an offer by reference to the value of which a fee has been determined in accordance with subsection (2) is replaced by an enhanced offer, the filing with the Executive of the enhanced offer shall be accompanied by a fee the amount of which shall be the difference between –
- (a) the fee previously paid under subsection (1) on filing of the relevant offer document or circular; and
 - (b) the fee that would have been payable under subsection (1) had the enhanced offer been included in such offer document or circular.
- (4) (a) For the purposes of this section, the value of an offer contained in an offer document or a circular shall be its value insofar only as it relates to the relevant share capital in the offeree company in the case of an offer under the Takeovers Code, or in the company issuing the offer document or the circular in the case of an offer under the Share Repurchase Code, as the case may be.
- (b) The payment of a fee payable under this section shall be accompanied by a statement showing the value of the offer and the manner in which the fee is determined having regard to paragraph (a).

6A. Fees for applications concerning certain waivers of Rule 26 of the Takeovers Code

- (1) An application to the Executive for a ruling, under Note 1 of the Notes on dispensations from Rule 26 as set out in the Takeovers Code, to waive the requirement under Rule 26 of the Takeovers Code to make a general offer shall be accompanied by a fee the amount of which shall be determined in accordance with subsection (2).
- (2) The amount of the fee payable under subsection (1) shall be the amount specified in column 2 of the Schedule 2 opposite such value in column 1 of that Schedule as is equivalent to the value of the general offer that

would be required to be made under Rule 26 of the Takeovers Code in the absence of a waiver of that requirement.

- (3) (a) For the purpose of this section, the value of a general offer shall be its value insofar only as it relates to the relevant share capital in the offeree company.
- (b) The payment of a fee payable under this section shall be accompanied by a statement showing the value of the general offer and the manner in which the fee is determined having regard to paragraph (a).

7. Fees for references to the Panel

Where, pursuant to either of the Codes, a person other than the Executive applies to the Panel for a review of any ruling of the Executive –

- (a) the application for the review shall be accompanied by a fee of \$50,000; and
- (b) in respect of each day or part of a day in excess of the first 2 days on which the Panel meets for the purpose of the review, the applicant shall, within 30 days of the announcement by the Panel of its ruling, pay an additional fee of \$20,000.

8. Fees for hearings concerning compliance with the Codes or any rulings under them

- (1) Where, pursuant to either of the Codes, a hearing takes place before the Panel to consider an allegation of breach of either of the Codes or of a ruling made under either of the Codes, a fee, the amount of which shall be determined in accordance with subsection (2), shall, within 30 days of the announcement by the Panel of its ruling, be payable by any person who in the opinion of the Panel –
 - (a) has caused unnecessary expense to be incurred in connection with the investigation of the allegation or the conduct of the hearing; or
 - (b) has committed a breach of either of the Codes or of a ruling made under either of the Codes.
- (2) The fee payable under subsection (1) shall be \$50,000 and, in addition, \$20,000 in respect of each day or part of a day in excess of the first 2 days on which the Panel meets for the purpose of considering the relevant allegation.

9. Fees for miscellaneous applications

An application to the Executive for any ruling under either of the Codes and

for which no fee is otherwise provided by these Rules shall be accompanied by a fee of \$24,000.

10. Non-payment of fees

- (1) Subject to section 11, where a fee is required by this Part to accompany an application or the filing of a document, the application or the filing shall not be entertained until the fee is paid.
- (2) Where any fee, other than the fee referred to in subsection (1), is not paid in accordance with this Part, it may be recovered by the Commission as a debt due from the person by whom the fee is payable.

PART IV

MISCELLANEOUS

11. Waiver of fees

The Commission may waive or refund, in whole or in part, the payment of any fee prescribed by these Rules if in any particular case it is of the opinion that the fee would otherwise be unduly burdensome or inappropriate in the circumstances of that case.

SCHEDULE 2

FEES RELATING TO OFFER DOCUMENTS, CIRCULARS AND WAIVER OF RULE 26 OF THE TAKEOVERS CODE

Value of offer	Fee \$
Not exceeding \$75,000,000	25,000
Exceeding \$75,000,000 but not exceeding \$125,000,000	75,000
Exceeding \$125,000,000 but not exceeding \$300,000,000	150,000
Exceeding \$300,000,000 but not exceeding \$600,000,000	250,000
Exceeding \$600,000,000 but not exceeding \$1,200,000,000	350,000
Exceeding \$1,200,000,000	\$500,000 plus 0.01% of value over \$2,000,000,000

SCHEDULE V

GUIDELINES FOR THE EXEMPTION OF LISTED COMPANIES FROM THE SHARE REPURCHASE REQUIREMENTS OF SECTION 49BA OF THE COMPANIES ORDINANCE (CAP. 32)

1.0 Definitions

1.1 Save for the terms hereinafter defined, and unless the context otherwise requires, terms used in these Guidelines shall have the meanings assigned to them by the Ordinance and any amendments thereto. In these guidelines:-

“Associate” has the meaning assigned to such term by the Listing Rules;

“Chief Executive” has the meaning assigned to such term by the Listing Rules;

“Code” means the Code on Share Repurchases approved and published from time to time by the SFC;

“Executive” means the Executive Director of the Corporate Finance Division of the SFC or any delegate of the Executive Director;

“Guidelines” means these guidelines for the exemption of listed companies from the share repurchase requirements of section 49BA of the Ordinance that can be granted pursuant to section 49BA(11);

“Listing Rules” means the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Ltd.;

“On-market share repurchase” has the meaning assigned to such term by the definitions to the Code;

“Off-market share repurchase” has the meaning assigned to such term by the definitions to the Code;

“Ordinance” means the Companies Ordinance (Cap. 32);

“Panel” means the Takeovers and Mergers Panel;

“SFC” means the Securities and Futures Commission;

“SFC Ordinance” means the Securities and Futures Commission Ordinance (Cap. 24);

“Share repurchase” has the meaning assigned to such term by the [definitions to the Code](#); and

“Substantial shareholder” means a person who holds 10% or more of the voting rights of a company.

2.0 Nature and purpose of the Guidelines

2.1 Section 49B(1) of the Ordinance provides that a listed company may purchase its own shares in accordance with the sections of the Ordinance referred to in section 49B(1) provided the company is authorised to do so by its articles. Section 49BA is among the sections of the Ordinance referred to in section 49B(1). Section 49BA prescribes, among other things, the ways in which a listed company may purchase its own shares and related shareholder approval and disclosure requirements.

2.2 The Code imposes similar requirements upon all public companies in Hong Kong regardless of their places of incorporation. Rule ~~178~~ of the Code provides, among other things, that the Executive may, upon the application of any person with an interest in a share repurchase, waive compliance with one or more provisions of the Code.

2.3 Section 49BA(11) of the Ordinance provides that the SFC may exempt any listed company from any of the provisions of section 49BA, subject to such conditions as it thinks fit. Section 49BA(11) of the Ordinance is intended to provide listed companies which are subject to the Ordinance with the same flexibility to seek relief from the share repurchase requirements of section 49BA of the Ordinance as Rule ~~17-8~~ of the Code affords all public companies in Hong Kong in respect of the share repurchase requirements of the Code.

2.4 The SFC has delegated its power to grant exemptions pursuant to section 49BA(11) of the Ordinance to the Executive and the Panel pursuant to section 9(1) of the SFC Ordinance. The Executive is thereby authorised to exercise the SFC’s discretion to grant exemptions from the share repurchase requirements of section 49BA in the first instance, and to refer novel, difficult or important exemption applications to the Panel for its consideration. The Panel is authorised to exercise the SFC’s discretion to grant the exemptions sought by any novel, important or difficult exemption applications that are referred to it by the Executive, and it is also authorised to review decisions made by the Executive in the first instance at the request of an aggrieved applicant. Applications for exemption from the share repurchase requirements of section 49BA of the Ordinance are therefore subject to the same procedural rules as applications for waivers from the share repurchase requirements of the Code. Reference is made in this regard to the Introduction to, and Rule ~~178~~ of, the Code.

2.5 Section 49BA(12) of the Ordinance provides that the SFC may suspend or withdraw an exemption granted under section 49BA(11) on the ground that the conditions subject to which the exemption was granted have not been

complied with or such other ground as the SFC thinks fit. Section 49BA(12) further provides that the SFC may vary any condition attached to an exemption granted pursuant to section 49BA(11). The SFC has also delegated its powers under section 49BA(12) to the Executive and the Panel pursuant to section 9(1) of the SFC Ordinance. The Executive and the Panel are thereby authorised to exercise the SFC's discretion to suspend, withdraw or vary exemptions granted pursuant to section 49BA(11) in the manner contemplated by paragraph 2.4 hereof for exemptions from the share repurchase requirements of section 49BA.

- 2.6** The Guidelines are intended to provide listed companies with guidance as to the way in which the Executive and the Panel may exercise the discretion that has been delegated to them by the SFC to grant exemptions from the share repurchase requirements of section 49BA. The Guidelines are not exhaustive. They are simply intended to assist listed companies with an understanding of matters that the Executive and the Panel will take into consideration when deciding to exercise such discretion. They may be modified or varied as circumstances require.

3.0 Application for an exemption or variation

- 3.1** An application for an exemption from section 49BA of the Ordinance, or for a variation of an exemption previously granted, should be made in writing and directed to the Executive. Exemption applications which seek relief from share repurchase requirements of the Ordinance which are common to both the Ordinance and the Code should also seek relief from the comparable Code requirements.

- 3.2** An applicant, when deciding what matters to include in its written application, should have regard to the Guidelines and the General Principles of the Code. The Executive or the Panel, as the case may be, may request additional information or make such enquiries as it considers appropriate when considering any application.

- 3.3** These Guidelines provide for general or “blanket” exemptions and specific exemptions. Exemptions, whether general or specific, may be made subject to such conditions as either the Executive or the Panel considers to be reasonably appropriate in the circumstances.

4.0 General or “blanket” exemptions

- 4.1** A general or “blanket” exemption is intended to relieve all listed companies, or an identifiable group of companies, from one or more of the share repurchase requirements of section 49BA of the Ordinance. Such an exemption would only be granted during a so-called “market emergency” and only if the exemption is considered to be in the best interests of the market.

- 4.2** An application for a general or “blanket” exemption would normally be referred by the Executive to the Panel for its consideration and any exemption

granted by the Panel would normally be made conditional upon approval by the SFC. Both the Panel and the SFC would consider the matter promptly. Such an exemption would be strictly limited in terms of its duration and the number of shares that could be repurchased, and it would require all share repurchases effected in reliance upon the exemption to be made by way of an on-market share repurchase conducted in accordance with the Listing Rules.

5.0 Specific exemptions

- 5.1** A specific exemption is intended to relieve a particular listed company from one or more of the share repurchase requirements of section 49BA of the Ordinance. It is currently anticipated that three types of specific exemptions would be granted.
- 5.2** The first type of specific exemption would relieve an applicant from the requirement to obtain the prior authorisation of its shareholders for a proposed share repurchase if a disorderly market for the shares of the company had developed, or was reasonably expected to develop, and time did not permit a shareholder's meeting to be held. Such an exemption would normally be conditional upon the share repurchase being made by way of an on-market share repurchase conducted in accordance with the Listing Rules.
- 5.3** The second type of specific exemption would also relieve an applicant from the requirement to obtain the prior authorisation of its shareholders for a proposed share repurchase if the proposed share repurchase constituted an off-market share repurchase for a small number of shares of the company from a shareholder who was not a director, chief executive or substantial shareholder of the company or an associate thereof. Such an exemption would normally be granted only if the costs of prior shareholder authorisation were outweighed by the benefits to the company of the proposed share repurchase.
- 5.4** The third type of specific exemption would relieve an applicant from the requirements of section 49BA(3)(a) and thereby allow companies to comply with the requirements under Rule 3 of the Code to send to shareholders the offer document within 21 days of the announcement of the proposed repurchase ~~under Rule 3~~ and to send the offer document with the notice of general meeting ~~under Rule 4~~. Such an exemption would be granted in all cases and would attract no fee.

SCHEDULE VI

WHITEWASH GUIDANCE NOTE

(See Note 1 ~~of Notes~~ on dispensations from Rule 26 of the Takeovers Code.)

1. Introduction

- (a) This Whitewash Guidance ~~#~~Note sets out the procedures to be followed if the Executive is to be asked to waive the obligation to make a general offer under Rule 26 of the Takeovers Code which would otherwise arise where, as a result of the issue of new securities as consideration for an acquisition or cash injection or in fulfilment of obligations under an agreement to underwrite the issue of new securities, a person or group of persons acting in concert acquires voting rights to an extent which would normally give rise to an obligation to make a general offer.
- (b) Where the word “offeror” is used in a particular Rule, it should be taken in the context of a whitewash as a reference to the potential controlling shareholders. Similarly, the phrase “offeree company” should be taken as a reference to the company which is to issue the new securities and in which the actual or potential controlling position will arise.
- (c) The General Principles of the Codes s apply equally to a transaction which is the subject of the whitewash procedures.

2. Specific grant of waiver required

In each case, specific grant of a waiver from the Rule 26 obligation is required. Such grant will be subject to:-

- (a) there having been no disqualifying transactions (as set out in Section paragraph 3 below of this Schedule VI) by the person or group seeking the waiver in the period from the date 6 months prior to the ~~posting to shareholders of the circular relating to announcement of~~ the proposals ~~or between such posting and~~ up to and including the date of the shareholders’ meeting;
- (b) prior consultation with the Executive by the parties concerned or their advisers;
- (c) approval in advance by the Executive of the circular to shareholders setting out the details of the proposals and containing the information required in Section paragraph 4 of this Schedule VI below;

- (d) compliance by the person or group seeking the waiver with the following Rules of the [Takeovers](#) Code, where relevant:-
- (i) Rule 3 (when an announcement is required and contents of an announcement);
 - (ii) Rules 7.1 and 26.4 (timing of resignation of offeree company directors and appointment of offeror nominees to the board of the offeree company);
 - (iii) Rule 8 (timing and content of documents);
 - (iv) Rule 9 (standard of care and responsibility);
 - (v) Rule 12 (clearance of documents and publication of announcements);
 - (vi) Rule 18 (statements during course of offer);
 - (vii) Rule 25 (special deals); [and](#)
 - ~~(viii) — Rule 30.1 (subjective conditions);~~
 - ~~(ixviii)-~~ Rule 34 (shareholder solicitations).
- (e) approval of the proposals by an independent vote, ~~on a poll~~, at a meeting of the holders of any relevant class of securities, whether or not any such meeting needs to be convened to approve the issue of the securities in question; and
- (f) disenfranchisement of the person or group seeking the waiver and of any other non-independent party at any such meeting.

~~Notes to Section 2:~~

1. *Early consultation*

Consultation with the Executive at an early stage is essential. Late consultation may well result in delays to planned timetables. Experience suggests that the documents sent to shareholders in connection with the whitewash procedure may have to pass through several proofs before they meet the Executive's requirements and no waiver of the Rule 26 obligation will be granted until such time as the documentation has been approved by the Executive.

2. Listing Division

It must be noted that, in the case of listed companies, clearance of the circular by the Listing Division of the Stock Exchange does not constitute approval of the circular by the Executive.

3. Disqualifying transactions

Notwithstanding the fact that the issue of new securities is made conditional upon the prior approval of a majority of the shareholders independent of the transaction at a general meeting of the company:-

- (a) the Executive will not normally waive an obligation under Rule 26 of the Takeovers Code if the person to whom the new securities are to be issued or any person acting in concert with him has acquired voting rights in the company in the 6 months prior to the announcement of the proposals but subsequent to negotiations, discussions or the reaching of understandings or agreements with the directors of the company in relation to the proposed issue of new securities; and
- (b) a waiver will not be granted or if granted will be invalidated if, without the prior consent of the Executive, any acquisitions or disposals of voting rights are made by such persons in the period between the announcement of the proposals and the shareholders' meeting.

Note:

Class (6) of the definition of acting in concert would apply to directors of a company and a whitewash would be regarded as an offer for this purpose.

4. Circular to shareholders

The circular must contain the following information and statements or, where relevant, comply appropriately with the Rules of the Takeovers Code as set out below:-

- (a) competent independent advice contemplated by Rule 2 to the offeree company regarding the transaction, the controlling position which it will create and the effect which this will have on shareholders generally;
- (b) full details of the maximum potential controlling holding of voting rights:-
 - (i) where this is dependent upon the outcome of underwriting arrangements, it should be assumed that the potential controlling shareholders will, in addition to any other entitlement, take up their full underwriting participation; and

- (ii) where convertible securities, warrants, options or other subscription rights are to be issued, the potential controlling holding of voting rights must be indicated on the assumption that only the controlling shareholders will convert or exercise the subscription rights, and will do so in full and at the earliest opportunity (the date of which must also be given);
- (c) where the maximum potential holding of voting rights resulting from the proposed transaction will exceed 55.2% of the voting rights of the company, specific and prominent reference to this possibility and to the fact that, ~~subject to Section 7 below,~~ the potential controlling shareholders may increase their holding without incurring any further obligation under Rule 26 to make a general offer;
- (d) in cases where the potential controlling shareholding will be held by more than one person, the identity of the potential controlling shareholders and their individual potential holding of voting rights in addition to the information required under [paragraph 4\(k\) of this Schedule VI](#) below;
- (e) a statement that the Executive has agreed, subject to approval by independent shareholders, to waive any obligations to make a general offer which might result from the transaction;
- (f) Note [1](#) to Rule 8 (documents to be on display);
- (g) Rule 9.2, paragraphs ~~(1), (2), (3), (6)~~ and ~~(10)~~ of Schedule I and paragraphs ~~(6), (7)~~ and ~~(8)~~ of Schedule II (information to shareholders which must include full details of the assets, if any, being injected ~~including, without limitation, an independent valuation of such assets~~);
- (h) Rules 9.3 and 9.4 (responsibility statements, etc.);
- (i) Rules 10 and 11 (profit forecasts, financial information, merger benefits statements and asset valuations relating to the offeree company or relating to assets being acquired by the offeree company);
- (j) paragraph ~~(14)~~ of Schedule I and paragraph ~~(11)~~ of Schedule II (arrangements in connection with the proposal);
- (k) paragraph ~~(4)~~ of Schedule I and paragraph ~~(2)~~ of Schedule II (disclosure of shareholdings and dealings). Dealings should be covered for the 6 months prior to the announcement of the proposals until the latest practicable date prior to the posting of the circular but ~~this does~~ dealings by persons in categories not apply in respect of paragraphs (2) (iii), (iv) or (v) of paragraph 2 of Schedule II need not be disclosed as there is no offer period;

- (l) paragraph ~~(9)~~ of Schedule II (material contracts); ~~and~~
- (m) paragraph ~~(13)~~ of Schedule II (service contracts of directors and proposed directors); ~~and~~
- (n) paragraphs 3 to 5 of Schedule II (share capital of the offeree company).

5. Underwriting and placing

In cases involving the underwriting or placing of offeree company securities, the Executive must be given details of all the proposed underwriters or placees, including any relevant information to establish whether or not there is a group acting in concert, and the maximum percentage which they could come to hold as a result of implementation of the proposals.

6. Announcements following shareholders' approval

- (a) Following the meeting at which the proposals are considered by shareholders, an announcement must be made by the offeree company giving the result of the meeting and the number and percentage of voting rights attaching to the shares to which the potential controlling shareholders have become entitled as a result.
- (b) Where the final controlling holding of voting rights is dependent on the results of underwriting, the offeree company must make an announcement following the issue of the new securities stating the number and percentage of voting rights held by the controlling shareholders at that time.
- (c) Where convertible securities, warrants, options or other subscription rights are to be issued:-
 - (i) the announcement of the potential controlling holding of voting rights must be made on the basis of the assumptions described in ~~Section~~paragraph 4(b) of this Schedule VI above; and
 - (ii) following each issue of new securities a further announcement must be made confirming the number and percentage of voting rights held by the controlling shareholders at that time.

Note to Section 6:

Copies of announcements

Copies of announcements made under this ~~Section~~paragraph 6 should be sent to the Executive.

7. Subsequent acquisitions by controlling shareholders

~~Immediately following approval of the proposals at the meeting of independent shareholders, the controlling shareholders will be precluded from acquiring additional voting rights in the offeree company for the 12 month period immediately following the acquisition, unless such further acquisition is authorised by way of a separate vote of independent shareholders. If such authorisation is not obtained, such person or group of persons shall be deemed to have a lowest percentage holding equal to the greater of (i) 35.30% and (ii) the percentage holding that is 52% less than the percentage holding of such person, or group of persons, immediately following the “whitewashed” transaction. When a person, or group of persons acting in concert, would otherwise be obliged to make a mandatory offer pursuant to Rule 26 of the Takeovers Code but the obligation is waived pursuant to a vote of independent shareholders in accordance with the terms of Note 1 on dispensations from Rule 26 of the Takeovers Code, such person, or group of persons, shall be deemed to have a lowest percentage holding equal to the percentage holding of such person, or group of persons, immediately after the whitewashed transaction. Any acquisition of additional voting rights by such person, or group of persons, subsequent to the whitewashed transaction shall be subject to the 2% creeper under Rule 26.1 of the Takeovers Code by reference to the lowest percentage holding in the 12 month period ending on the date of the completion of the relevant acquisition. (See Note 15 to Rule 26.1 of the Takeovers Code.)~~

8. Convertible securities, warrants and options

Where shareholders approve the issue of convertible securities, or the issue of warrants or the grant of options to subscribe for new shares where no immediate voting rights are obtained, the Executive will view the approval as sanctioning maximum conversion or subscription at the earliest possible moment without the necessity for the making of an offer under Rule 26 ~~of the Takeovers Code~~. ~~After conversion or subscription, the potential controlling shareholders shall be deemed to have a lowest percentage holding equal to their percentage holding immediately after the conversion or subscription. (See also Note 15 to Rule 26.1 of the Takeovers Code.)~~

If the potential controlling shareholders acquire further voting rights after the date of the resolution, the waiver will only apply to conversion into, or subscription for, such number of voting rights as, when added to the purchases, does not exceed the number originally approved by shareholders. ~~Such further acquisition of voting rights would be subject to Rule 26 of the~~

Takeovers Code so that an offer obligation would arise if as a result the percentage shareholding of the potential controlling shareholders increased to 30% or, if already over 30%, by more than 2% in any 12 month period.

Where shareholders approve the issue of convertible securities, or the issue of warrants or the grant of options to subscribe for new shares without the necessity for the making of an offer under Rule 26 of the Takeovers Code on conversion or subscription, for so long as any of these securities remain outstanding the company must include in its annual and interim accounts a statement describing the securities outstanding, the impact of full conversion or subscription and the fact that shareholders have approved that no offer under Rule 26 of the Takeovers Code would arise on full conversion or subscription. Such statement should be disclosed together with the disclosure of the interests of directors and substantial shareholders.

(See also Note 6 to Rule 26.1 of the Takeovers Code.)

9. Share repurchases

If following the approval by shareholders in a company under Note 1 on dispensations from Rule 26 of the Takeovers Code of the issue of convertible securities, or the issue of warrants or the grant of options, and prior to conversion or subscription the company repurchases shares, the percentage shareholding of the potential controlling shareholders may increase and Rule 32.1 of the Takeovers Code may apply. Where Rule 32.1 of the Takeovers Code does not apply because the potential controlling shareholders are not directors or acting in concert with any directors, the waiver will apply to conversion into, or subscription for, such number of voting rights as originally approved by shareholders. Where the potential controlling shareholders are directors or acting in concert with any directors, they must seek further approval of shareholders for the conversion into, or subscription for, such number of voting rights as originally approved by shareholders.

10. Underwriting

Where a person or group of persons acting in concert seeks approval of shareholders for a maximum potential controlling holding of voting rights that may arise as a result of underwriting an issue of new securities, the percentage holding of voting rights following the issue shall be deemed to have been whitewashed, regardless of whether the increase in this percentage holding would have incurred a general offer obligation. The underwriting shareholder shall be deemed to have a lowest percentage holding equal to his percentage holding immediately after the issue.

Where such person or persons wish to acquire any voting rights after the shareholders' meeting to approve the proposal but before **completion of the** issue of the new securities, they must consult the Executive to determine the circumstances, if any, in which such acquisitions may be made.

SCHEDULE VII

CONFLICTS OF INTEREST GUIDANCE NOTE

Instances where conflicts of interest may arise include those resulting from the possession of material confidential information or where the adviser is part of a multi-service financial organisation, as exemplified below.

(a) Material confidential information

A financial adviser may have the opportunity to act for an offeror or the offeree company in circumstances where the adviser is in possession of material confidential information relating to the other party, for example, because it was a previous client or because of involvement in an earlier transaction. This will often necessitate the financial adviser declining to act, for example, because the information is such that a conflict of interest is likely to arise. Such a conflict will normally be incapable of resolution simply by isolating information within the relevant organisation or by assigning different personnel to the transaction.

(b) Conflicts of multi-service financial organisations

A financial adviser, or proposed financial adviser, that is part of a multi-service financial organisation should be alert to possible conflicts of interest.

Such conflicts may arise in particular where organisations involve an auditor's practice or a lending institution. For example a financial adviser must not act as independent financial adviser to an offeree company under Rule 2 of the Takeovers Code if the financial adviser, or any of its affiliated entities, is the auditor of the offeree company.

In all cases of possible conflict the Executive must be consulted.

(cb) Segregation of businesses

It is incumbent upon multi-service financial organisations to familiarise themselves with the implications under the Codes of conducting other businesses in addition to, for example, corporate finance or stockbroking. If one part of such an organisation is involved in an offer, for example, in giving advice to an offeror or the offeree company, a number of Rules of the Codes may be relevant to other parts of that organisation, whose actions may have serious consequences under the Codes. Compliance departments of such organisations have an important role in this respect and are encouraged to liaise with the Executive in cases of doubt.

The concepts of "exempt fund managers" and "exempt principal traders" in the Takeovers Code are in recognition of the fact that fund management and principal trading may be conducted on a day-to-day basis quite separately within the same

organisation; but it is necessary for such organisations to satisfy the Executive that this is the case. It is essential, therefore, that such organisations arrange their affairs to ensure not only total segregation of those operations but also that those operations are conducted without regard for the interests of other parts of the same organisation or of their clients. The Takeovers Code contains a number of Rules which are designed to ensure that the principles on which these concepts are based are upheld.