

1. **Methods of share repurchase**

A company may engage in the following types of share repurchase:-

- (a) an on-market share repurchase;
- (b) an off-market share repurchase approved in accordance with Rule 2;
- (c) an exempt share repurchase; and
- (d) a **share repurchase by general offer** in accordance with the General Principles and Rules of the Codes.

A share repurchase may normally be made only by the company the shares of which are the subject of the share repurchase. Where a wholly owned subsidiary of a company has issued securities exercisable or convertible into shares of that company such subsidiary may redeem or repurchase such securities in accordance with the terms of their issue.

2. **Off-market share repurchases**

Off-market share repurchases must be approved by the Executive before a repurchasing company acquires any shares pursuant to such share repurchase. Such approval will normally be conditional upon the following:-

- (a) approval of the proposed off-market share repurchase by at least three-fourths of the votes cast on a poll by disinterested shareholders in attendance in person or by proxy at a general meeting of shareholders duly convened and held to consider the proposed transaction;
- (b) the notice of meeting convening such general meeting being accompanied by a circular containing, in addition to the information to be disclosed in an offer document by virtue of Rule 4 and, where applicable, Rule 5 the following:-
 - (i) the identity of the proposed offeree(s) and a description of its (their) business activities and its (their) relationship with the offeror, if any;
 - (ii) a description of the terms and conditions of the agreement(s) between the company and the proposed offeree(s); and
 - (iii) the advice of an independent financial adviser and the recommendation of an independent committee of the company's board of directors as to whether shareholders should approve or disapprove the off-market share repurchase proposal;
- (c) a certified copy of the resolution contemplated by Rule 2(a) being filed with the Executive within 3 days of the general meeting of shareholders at which such resolution is passed; and
- (d) a copy of the agreement(s) referred to in Rule 2(b)(ii) above being available for inspection by shareholders at the meeting convened to consider the off-market share repurchase proposal and during the period from the date of mailing the notice of meeting up to and including the date of such general meeting.

3. Shareholder approval

3.1 General meeting to approve a share repurchase by general offer

A share repurchase by general offer must be approved by a majority of the votes cast by shareholders in attendance in person or by proxy at a general meeting of the shareholders duly convened and held to consider the proposed share repurchase. Such general meeting shall be convened by a notice of meeting which is accompanied by the offer document. If shareholders do not approve the share repurchase, the offer must lapse.

A certified copy of the ordinary resolution contemplated by this Rule 3.1 must be filed with the Executive within 3 days of the general meeting of shareholders at which such resolution is passed.

Note to Rule 3.1:

Exemption from Companies Ordinance

The offeror must apply to the Executive for exemption from the requirements of section 49BA(3)(a) so as to allow the notice of general meeting to be accompanied by the offer document and for the offer document to be despatched within 21 days of the announcement. No fee will be charged for such application for exemption. (See Rule 5.1(c) and also paragraph 5.0 of Schedule V.)

3.2 Approval by independent shareholders

If a shareholder has a material interest in a share repurchase which is different from the interests of all other shareholders, the Executive will normally require the share repurchase to be approved by a majority of the votes cast by all other shareholders in attendance in person or by proxy at a general meeting of shareholders duly convened and held to consider the share repurchase.

3.3 Approval of delistings and privatisations by independent shareholders

If after a proposed share repurchase the shares of an offeror are to be delisted from the Stock Exchange or the company is to be privatised,

(a) the directors of the offeror and any persons acting in concert with them will not be considered to be independent and therefore they may not vote at the meeting of shareholders convened in accordance with the Listing Rules; and

(b) the share repurchase by general offer must be approved by:-

(i) at least 75% of the votes attaching to the shares owned by independent shareholders that are cast either in person or by proxy at a duly convened general meeting; and

(ii) the number of votes cast against the resolution being not more than 10% of the votes attaching to the shares owned by independent shareholders.

3.4 Different classes of equity share capital

If the offeror has more than one class of equity share capital, the Executive should be consulted as it may require the share repurchase to be made subject to approval by a majority of the votes cast by holders of each class of shares in attendance in person or by proxy at separate class meetings of such shareholders duly convened and held to consider the proposed share repurchase.

4. The offer document

4.1 Contents of offer document

A share repurchase by general offer shall be made by way of an offer document which shall contain the information required by Schedule III, together with any other relevant information to enable shareholders to reach a properly informed decision.

4.2 Securities that may be exercised or converted

An offer document need not be despatched to registered holders of securities that may be exercised or converted into shares of the class of shares that is the subject of a share repurchase by general offer if the offer price is lower than the exercise or conversion price of such securities by more than 10%. If in doubt the Executive should be consulted.

5. Share repurchases by general offer

5.1 Application of Takeovers Code

Share repurchases by general offer must be conditional on the approval of shareholders in accordance with Rule 3 and must be made in accordance with the Rules of this Share Repurchase Code and the applicable Rules of the Takeovers Code. In all cases an offeror must consult the Executive at an early stage to determine the applicability to the proposed share repurchase by general offer of the Rules of the Codes and the Notes thereto.

In the case of a share repurchase by general offer seeking to privatise or delist the company, all Rules of the Takeovers Code will normally apply.

In all other share repurchases by general offer, the following Rules of the Takeovers Code will normally apply:

- (a) Rule 1.4;
- (b) Rules 2.1, 2.2 and 2.6-2.11;
- (c) Rules 3.2 and 3.4-3.7;
- (d) Rule 5;
- (e) Rules 8.1, 8.2, 8.5 and 8.6;
- (f) Rule 9;
- (g) Rules 10.1-10.9 and 10.11;
- (h) Rules 11 and 12;
- (i) Rules 15-20;
- (j) Rules 21.1, 21.3, 21.4 and 21.6;
- (k) Rules 22 and 23;
- (l) Rules 24.1 and 24.3;
- (m) Rule 25;
- (n) Rule 27;
- (o) Rule 29;
- (p) Rule 30.1;
- (q) Rules 32.1 and 32.3; and

(r) Rule 35.

Note to Rule 5.1:

Notes to Rules of the Takeovers Code

In the case of a number of the Rules of the Takeovers Code listed above in this Rule 5.1 that may be applicable to *share repurchases by general offer* some of the Notes to such Rules may not be relevant and the Executive should be consulted.

1.25.2 Excluded shareholders

Where an offeror has shareholders located in a jurisdiction the laws of which prohibit a share repurchase by general offer to be made in accordance with the requirements of the Codes, the Executive must be consulted. The Executive will be concerned to ensure that the interests of such shareholders are not unduly prejudiced.

5.3 Pro rata entitlement

Share repurchases by general offer must be made to all shareholders of the class and arrangements must be made for those shareholders who wish to do so to accept in full for the relevant percentage of their holdings. Shares tendered in excess of this percentage must be accepted by the offeror from each shareholder in the same proportion as the number tendered to the extent necessary to enable the offeror to obtain the total number of shares for which the offer has been made.

5.4 On-market share repurchases

An offeror shall not engage in an on-market share repurchase following the announcement of a *share repurchase by general offer* up to and including the date *share repurchase by general offer* closes, lapses or is withdrawn, as the case may be.

6. **Takeovers Code implications of share repurchases**

If as a result of a share repurchase a shareholder's proportionate interest in the voting rights of an offeror increases, such increase will be treated as an acquisition for the purposes of the Takeovers Code and Rule 32 of the Takeovers Code shall apply.

7. **Prohibition on distributions**

A company shall not announce or engage in a distribution of shares following the announcement of a share repurchase for the period beginning on the date of such announcement and ending on the 31st day immediately following completion or withdrawal of the share repurchase.

This Rule 7 will not normally apply to share distributions which do not involve the raising of capital such as bonus issues and dividends in specie. Any person proposing to engage in a share distribution during the period contemplated by this Rule 7 should consult the Executive in advance of such distribution and any announcement thereof.

8. Waivers

The Executive has discretion to waive compliance with requirements of the Share Repurchase Code particularly if any party to a share repurchase considers that compliance would be unduly burdensome, e.g. in the case of a share repurchase by general offer to odd lot shareholders or a share repurchase by general offer for non-voting fixed participation shares which are more analogous to debt securities than equity securities.

3. CODE ON SHARE REPURCHASES

INDEX

	Page
Definitions	.
General Principles	.
Rules	
1. Share repurchases to be effected by an offeror by way of a general offer	.
2. Exemptions from the requirements of the Code	.
3. The offer document	.
4. Shareholder approval	.
5. The offer period	.
6. General offers for in excess of 10% of outstanding shares	.
7. Share repurchases which have effects similar to privatisations	.
8. Takeovers Code implications of share repurchases	.
9. Prohibition on distributions	.
10. Announcements, advertisements and temporary suspensions	.
11. Secrecy	.
12. Standard of care and responsibility	.
13. Conditions	.
14. When shares to be taken up and paid for	.
15. Withdrawal or lapse of an offer	.
16. Shareholder solicitations	.
17. Waivers, referrals and appeals	.

DEFINITIONS

1. ~~Code~~ means the Code on Share Repurchases.
2. ~~Employee share repurchase~~ means a share repurchase made by an offeror from one or more of its current or former employees, or the current or former employees of a subsidiary of the offeror, in accordance with an employee share option scheme which has been approved by shareholders of the offeror in general meeting.
3. ~~Executive~~ means the Executive Director of the Corporate Finance Division of the SFC and any delegate of the Executive Director.
4. ~~General offer~~ means a share repurchase effected by way of an offer made by an offeror to all holders of shares of a class of shares of the offeror that is the subject of a share repurchase.
5. ~~Listing Rules~~ means the Rules Governing the Listing of Securities on the Stock Exchange.
6. ~~Offer~~ means a share repurchase.
7. ~~Offeree~~ means shareholders whose shares are the subject of a share repurchase.
8. ~~Offeror~~ means a company engaged in, or considering engaging in, a share repurchase in respect of its own shares.
9. ~~Off-market share repurchase~~ means a share repurchase that is not a general offer and is not otherwise exempt from the requirements of the Code by virtue of paragraphs (a), (c), (d), (e), (f) and (g) of Rule 2.
10. ~~On-market share repurchase~~ means a share repurchase made by:
 - (a) a company having a listing on the Stock Exchange through the facilities of the Stock Exchange in accordance with the Listing Rules;
 - (b) a company having a primary listing on the Stock Exchange through the facilities of another exchange recognised by the Executive and the Stock Exchange as having share repurchase rules applicable to the company that are comparable to those of the Listing Rules, provided such share repurchase is made in accordance with the rules of such other exchange;
 - (c) a company having a primary listing on the Stock Exchange through the facilities of another exchange in accordance with the Listing Rules applied with references to the Exchange in Rules 10.06 (1), (2) and (6) of the Listing Rules being construed as references to “on another exchange” or “on the other exchange”, as appropriate;
 - (d) a company having a secondary listing on the Stock Exchange through the facilities of the Stock Exchange in accordance with rules of another exchange

~~that are recognised by the Executive and the Stock Exchange as being comparable to the Listing Rules; or~~

~~(e) a company having a secondary listing on the Stock Exchange through the facilities of another exchange in accordance with rules of such other exchange that are recognised by the Executive and the Stock Exchange as being comparable to the Listing Rules.~~

~~11. **Panel** means the Takeovers and Mergers Panel.~~

~~12. **Person** includes an individual and a company.~~

~~13. **Securities** has the meaning attributed to the term “securities” in the Securities Ordinance.~~

~~14. **SFC** means the Securities & Futures Commission.~~

~~15. **Shares** means shares of all classes and securities which carry a right to subscribe or purchase shares.~~

~~16. **Shareholder** means a holder of shares.~~

~~17. **Share repurchase** means an offer to purchase, redeem or otherwise acquire shares of an offeror made by or on behalf of the offeror to any shareholder of the offeror and includes a privatisation, scheme of arrangement or other form of reorganisation that consists, in whole or in part, of such an offer.~~

~~18. **Stock Exchange** means The Stock Exchange of Hong Kong Limited.~~

~~19. **Takeovers Code** means the Code on Takeovers and Mergers.~~

GENERAL PRINCIPLES

1. Introduction

1.1. It is impracticable to devise rules in sufficient detail to cover all circumstances which can arise in relation to share repurchases. Persons engaged in offers should be aware therefore that the spirit as well as the precise wording of the General Principles and rules must be observed. Moreover, the General Principles and the spirit of the Code will apply in areas or circumstances not explicitly covered by any rule.

2. General Principles

1. All shareholders are to be treated even handedly and all shareholders of the same class are to be treated similarly.
2. Shareholders should be given sufficient information, advice and time to reach an informed decision as regards the merits of an offer. No relevant information should be withheld. Any document or advertisement issued in connection with a share repurchase should be prepared with the highest possible degree of responsibility and accuracy and with the same standard of care with regard to the statements made therein as if it were a prospectus. This applies whether the document is issued by an offeror directly, by a third party with an interest in the offer or by an adviser on behalf of either of them. Those who issue any such document or advertisement must ensure that it remains accurate and up to date throughout the offer period, and must notify shareholders of any material changes as soon as possible.
3. All persons concerned with share repurchases should take every precaution to avoid the creation or continuance of a false market. Parties involved in share repurchases must also take care to ensure that statements are not made which may mislead shareholders or the market.
4. Rights of control should be exercised in good faith and the oppression of minority or non-controlling shareholders is always unacceptable.
5. Directors should have regard to the interests of the shareholders as a whole and not to their own interests or those derived from personal or family relationships.
6. Shareholders of a company engaged in a share repurchase should be aware that if they, or persons with whom they act in concert, refrain from tendering any of their shares to the offer, the share repurchase could result in an increase in their proportionate interests in the voting rights of the company which could give rise to the obligation to make a mandatory offer in accordance with Rule 26 of the Takeovers Code. Offeree shareholders should therefore be aware of, and assess, the Takeovers Code implications of a proposed share repurchase and if a

~~mandatory offer obligation could arise they should approach the Executive at the earliest opportunity.~~

- ~~7. All parties concerned with share repurchases are required to co-operate to the fullest extent with the Executive and the Panel, and to provide all relevant information.~~

RULES

1. ~~Share repurchases to be effected by an offeror by way of a general offer~~

~~A share repurchase may only be made by the company the shares of which are the subject of the share repurchase.~~

~~A company may only engage in a share repurchase by way of a general offer or in accordance with Rule 2.~~

~~A general offer shall be made on the same terms to all holders of shares of the class of shares that is the subject of the general offer. A general offer may exclude shareholders located in a jurisdiction other than Hong Kong, the laws of which prohibit a share repurchase which is made in accordance with the requirements of the Code.~~

~~A general offer may be made for all, or part only, of a class of shares. If the general offer is made for less than all of the outstanding shares of a class arrangements must be made for those who wish to do so to accept in full for the relevant percentage of their holdings. Shares tendered in excess of this percentage must be accepted by the offeror from each offeree in the same proportion as the number tendered to the extent necessary to enable the offeror to obtain the total number of shares for which he has offered. To avoid the creation of odd lots as the result of a partial share repurchase offerors are encouraged to round up each shareholder's pro rata entitlement to the nearest board lot unless precluded from doing so due to related regulatory or financial considerations.~~

~~The consideration offered for shares to be repurchased may consist of cash or securities or part cash and part securities. If the consideration to be offered consists, in whole or in part, of securities the offer document shall include, in addition to the information required by Rule 3, such other information as would be included in a prospectus or listing document, as the case may be, in relation to the securities to be issued.~~

~~An offeror shall not engage in an on-market share repurchase following the announcement of a general offer up to and including the date the general offer closes, lapses or is withdrawn, as the case may be.~~

2. ~~Exemptions from the requirements of the Code~~

~~A company may engage in the following types of share repurchases and such share repurchases are exempt from the general offer requirements of the Code:~~

- ~~(a) an on-market share repurchase;~~
- ~~(b) an off market share repurchase that has been approved under the Code;~~
- ~~(c) an employee share repurchase;~~

~~(d) a share repurchase made in accordance with terms and conditions attached to the shares being repurchased that either permit or require such share repurchase without the prior agreement of the owners of the shares;~~

~~(e) a share repurchase made by a company at the request of the owners of the shares repurchased in accordance with terms and conditions attached to the shares which provide the owner of the shares with a right to require the company to effect such share repurchase;~~

~~(f) a share repurchase that is required by a statute of the jurisdiction in which the offeror is incorporated or otherwise established; and~~

~~(g) a share repurchase that is made in accordance with Rules 4 and 6 of the Code and is approved or supervised by a court of law in Hong Kong.~~

Notes:

1. Exemption dependent upon strict compliance

~~A share repurchase made in accordance with Rule 2 shall be exempt from the general offer requirements of the Code only if it is made in compliance with applicable listing rules, approval conditions, share terms and conditions, statutory or Code requirements, as the case may be.~~

2. Off market share repurchases

~~Off market share repurchases must be approved by the Executive before a repurchasing company acquires any shares pursuant to such share repurchase. Such approval will generally be conditional upon the following:~~

~~(a) approval of the proposed off market share repurchase by at least three-fourths of the votes cast on a poll by disinterested shareholders in attendance in person or by proxy at a general meeting of shareholders duly convened and held to consider the proposed transaction;~~

~~(b) the notice of meeting convening such general meeting being accompanied by a circular containing, in addition to the information to be disclosed in an offer document by virtue of Rule 3 and, where applicable, Rule 6, the following:~~

~~(i) the identity of the proposed offeree(s) and a description of its (their) business activities and its (their) relationship with the offeror, if any;~~

- ~~(ii) a description of the terms and conditions of the agreement(s) between the company and the proposed offeree(s); and~~
- ~~(iii) if considered appropriate by the Executive, the recommendation of an independent committee of the company's board of directors as to whether shareholders should approve or disapprove the off-market share repurchase proposal;~~
- ~~(c) a certified copy of the special resolution contemplated by (a) being filed with the Executive; and~~
- ~~(d) a copy of the agreement(s) referred to in (b)(ii) above being available for inspection by shareholders at the meeting convened to consider the off-market share repurchase proposal and during the period from the date of mailing of the notice of meeting up to and including the date of such general meeting.~~

~~The Executive reserves the right to grant unconditional approval to an off-market share repurchase if, in the circumstances, it is unreasonable or impractical for the repurchasing company to convene a shareholders meeting and such approval is not contrary to the General Principles of the Code and the interests of shareholders generally. Rule 2.8 of the Takeovers Code applies, mutatis mutandis, to any independent committee which the board of directors of an offeror is required to appoint for purposes of this Rule 2.~~

~~3. Recognised exchanges~~

~~For purposes of the Code, the Stock Exchange and the Executive recognised the London Stock Exchange.~~

3. The offer document

~~A general offer shall be made by way of an offer document which shall contain full disclosure of all information required by an offeree to make an informed decision regarding the merits of the offer including, without limitation, the information prescribed by the Rules and Schedule III.~~

~~The offer document must not be dated more than three days prior to its despatch to shareholders.~~

~~The offer document should be despatched to all registered holders of shares of the class of shares that is the subject of the offer and to all registered holders of securities that may be exercised or converted into shares of such class prior to expiry of the offer.~~

~~The offer document shall be written in English or Chinese and shall include a~~

~~translation in Chinese or English, respectively, unless the Executive has previously agreed to waive this requirement.~~

~~The offer document, and any amendments thereto, must be filed with the Executive for comment prior to its despatch to shareholders and must not be despatched until the Executive has confirmed that it has no further comments thereon. Five copies of the final offer document shall be filed with the Executive and the Stock Exchange.~~

~~The offer document must be despatched to shareholders within 21 days of the date of the announcement by an offeror that it intends to make an offer. The Executive's consent is required if the offer document cannot be posted within this period.~~

Notes:

1. — Exemption from Companies Ordinance

The offeror must apply to the Executive for exemption from the requirements of section 49BA(3)(a) so as to allow the offer document to be despatched to shareholders within 21 days of the announcement. No fee will be charged for such application for exemption. (See also paragraph 5 of Schedule V.)

2. — Despatch of offer document

An offer document need not be despatched to registered holders of securities that may be exercised or converted into shares of the class of shares that is the subject of an offer if the offer price is lower than the exercise or conversion price of such securities by more than 10%. If in doubt the Executive should be consulted.

4. — Shareholder approval

~~An offeror may not take up shares tendered to a general offer unless and until the general offer has been approved by a majority of the votes cast by shareholders in attendance in person or by proxy at a general meeting of shareholders duly convened and held to consider the proposed share repurchase. Such general meeting shall be convened by a notice of meeting which is accompanied by the offer document. If shareholders do not approve the share repurchase the offer shall be withdrawn.~~

~~A certified copy of the ordinary resolution contemplated by this Rule 4 must be filed with the Executive within three days of the general meeting of shareholders at which such resolution is passed.~~

~~If management is appointed as proxy by one or more shareholders for the purpose of a shareholder vote to be held to approve any matter in connection with a share repurchase, the vote shall be conducted by way of a poll if management proxies which represent votes opposed to the approval sought~~

constitute 5% or more of the votes that are eligible to be cast for the purpose of the shareholder vote.

Notes:

~~1. — Approval by disinterested shareholders~~

~~If a shareholder has a material interest in a share repurchase which is different from the interests of all other shareholders the Executive will normally require the share repurchase to be approved by a majority of the votes cast by all other shareholders in attendance in person or by proxy at a general meeting of shareholders duly convened and held to consider the share repurchase.~~

~~2. — “B” shares~~

~~If the offeror has shares outstanding which have voting rights that do not bear a reasonable relationship to the equity interest of such shares when fully paid, the Executive should be consulted as it may require the share repurchase to be made subject to approval by a majority of the votes cast by holders of both classes of shares in attendance in person or by proxy at separate class meetings of such shareholders duly convened and held to consider the proposed share repurchase.~~

~~3. — Exemption from Companies Ordinance~~

~~The offeror must apply to the Executive for exemption from the requirements of section 49BA(3)(a) so as to allow the notice of general meeting to be accompanied by the offer document. No fee will be charged for such application for exemption. (See also paragraph 5 of Schedule V.)~~

5. — The offer period

~~The offer period shall begin on the day that the offer document and the notice of meeting convening a general meeting of shareholders to approve the share repurchase are posted for delivery to shareholders and shall remain open until such meeting has been concluded. If approved by shareholders the offer shall continue to remain open at least until the close of business on the tenth day immediately following the date of the meeting.~~

~~An acceptor of an offer is entitled to withdraw his acceptance at any time prior to the later of the date the offer is approved by shareholders and the date the offer becomes or is declared unconditional.~~

~~If the offer is conditional it must specify the latest day when the offeror can declare the offer unconditional. Where a conditional offer becomes or is declared unconditional it should remain open for acceptance for not less than ten days thereafter.~~

~~An offer shall not be kept open after the expiry of 60 days from the date of posting of the offer document unless it has previously become unconditional and shall not be replaced with a revised offer following approval of the offer by shareholders.~~

~~6. General offers for in excess of 10% of outstanding shares~~

~~If a general offer is to be made for in excess of 10% of the outstanding shares of a class of shares of an offeror the related offer document should, in addition to the information required by Rule 3, include the following:~~

~~(a) — an independent financial adviser's opinion that the proposed share repurchase is, or is not, fair and reasonable and the reasons therefor; and~~

~~(b) — a summary of an up-to-date independent valuation of the offeror's property assets.~~

~~The valuation contemplated by (b) above must be carried out or confirmed by an independent, professionally qualified valuer or other expert and the basis of the valuation must be clearly stated. If the offeror's board of directors considers that the valuation is not appropriate as compared with the values shown in the offeror's latest published audited accounts, a statement to this effect, together with the reasons therefor, should be included in the offer document.~~

~~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 include a statement that the financial adviser, valuer or other expert, as the case may be, has given and not withdrawn his consent to the publication of his name and the portion of the offer document for which he is responsible in the context in which it appears therein.~~

~~A person who has, or had, a connection, financial or otherwise, with the offeror of a kind likely to create a conflict of interest will not be regarded as an independent person for purposes of this Rule 6.~~

~~7. Share repurchases which have effects similar to privatisations~~

~~If, as a direct or indirect result of a proposed share repurchase, shareholders of an offeror can be compelled, either legally or economically, to dispose of their interest in any shares of the offeror, the Executive should be consulted regarding appropriate steps that should be taken by the offeror to protect the interests of such shareholders. Such steps will normally include, without limitation, the appointment of an independent committee of the offerors board of directors to advise such shareholders on the merits of an offer, the appointment of an independent financial adviser to advise the independent committee, and approval of the proposed share repurchase by at least three-~~

~~fourths of such shareholders in attendance in person or by proxy at a general meeting of the shareholders of such class of shares duly convened and held to consider the share repurchase.~~

~~Notes:~~

~~1. — Stock Exchange delistings~~

~~A shareholder may be considered to be under an economic compulsion to dispose of his shares where shares are to be delisted from the Stock Exchange and the company is not, at the time of the delisting, listed on another exchange which would provide a comparable market for shareholders.~~

~~2. — Statutory rights of compulsory acquisition~~

~~The steps to be taken by an offeror to protect the interests of shareholders in respect of a share repurchase which has effects similar to a privatisation need not be taken when such share repurchase is being conducted pursuant to a statutory right of compulsory acquisition provided such statutory right can only be exercised once not less than three-fourths in value of the shares held by the offeree's shareholders have been acquired by the offeror.~~

~~3. — Independent committees~~

~~Rule 2.8 of the Takeovers Code applies, mutatis mutandis, to any independent committee which the board of directors of an offeror is required to appoint for purposes of this Rule 7.~~

8. — Takeovers Code implications of share repurchases

If as a result of a share repurchase a shareholder's proportionate interest in the voting rights of an offeror increase, such increase will be treated as an acquisition for purposes of the Takeovers Code. As a result a shareholder, or group of shareholders acting in concert, could obtain or consolidate control of the offeror and become obliged to make a mandatory offer in accordance with Rule 26 of the Takeovers Code. In such cases the Executive should be consulted. In the case of a general offer or an off-market share repurchase, the Executive will treat an application for a waiver from the requirement to make a mandatory offer in accordance with Rule 26 as if it were an application for a whitewash waiver in accordance with Note 1 of the Notes on dispensations from Rule 26. The Executive will normally grant such a waiver if (a) the implications of the share repurchase are disclosed in the offer document and (b) the share repurchase is approved in accordance with applicable share repurchase approval requirements of the Code by those shareholders who could not become obliged to make a mandatory offer as a result of the share repurchase; and (c) a procedure on the lines of that set out in Note 1 of the Notes on dispensations from Rule 26 and Schedule VI is followed.

Note:

Shareholder not acting in concert with directors

A shareholder not acting in concert with the directors will not normally be required to make a mandatory offer if, as a result of a share repurchase, his proportionate interest in the voting rights of the offeror exceeds the mandatory offer thresholds prescribed by Rule 26 of the Takeovers Code. This exception will not normally apply when the shareholder purchased shares at a time when he had reason to believe that such a share repurchase would take place.

9. — Prohibition on distributions

~~A company shall not announce or engage in a distribution of shares following the announcement of a share repurchase for the period beginning on the date of such announcement and ending on the 31st day immediately following completion or withdrawal of the share repurchase.~~

Note:

Consultation with Executive regarding exceptions to prohibition

Rule 9 will not normally apply to share distributions which do not involve the raising of capital such as bonus issues and dividends in specie. Any person proposing to engage in a share distribution during the period contemplated by Rule 9 should consult the Executive regarding the application of this Note in advance of such distribution and any announcement thereof.

10. — Announcements, advertisements and temporary suspensions

~~As soon as the board of directors of an offeror has decided to make an offer the offeror shall publish an announcement of the material terms of the offer.~~

~~On the dealing day immediately following the day on which the first offer or any extended or revised offer is due to expire, or on the day on which any offer becomes or is declared unconditional, the offeror shall announce that the offer has lapsed, been extended, closed or has become or has been declared unconditional. Where appropriate, the announcement shall state the number of shares that have been acquired by the offeror pursuant to the share repurchase and the number of shares for which acceptances of the offer have been received. In the case of a partial offer the announcement shall also disclose the way in which each shareholder's pro rata entitlement was determined. This information must also be published in the company's annual reports.~~

~~Any announcement, advertisement or similar document in relation to a share repurchase must be filed with the Executive for comment prior to release or publication and must not be released or published until the Executive has confirmed that it has no further comments thereon. The final copy of the document must be filed with the Executive and the Stock Exchange in~~

~~duplicate. All announcements must be published as a paid announcement in at least one leading English language newspaper and one leading Chinese language newspaper being in each case a newspaper which is published daily and circulating generally in Hong Kong.~~

~~In the case of listed companies all share repurchases must be notified to the Stock Exchange in accordance with the Listing Rules.~~

~~An offeror should consider the advisability of requesting the Stock Exchange to suspend trading in its shares temporarily when it issues any announcements in relation to a proposed share repurchase.~~

~~Note:~~

~~Suspension of trading~~

~~The consent of the Stock Exchange is required for a suspension of trading. It is understood that information included in an announcement in relation to a share repurchase may not always include full details of the proposed offer but the announcement should be sufficiently full to satisfy the Stock Exchange, after consultation with the Executive, that renewed dealings can take place on an informed basis, and that the creation of a false market will be avoided.~~

11. — Secrecy

~~Prior to the announcement of an offer the vital importance of absolute secrecy must be emphasised. All persons privy to confidential information, and particularly price sensitive information, concerning an offer or contemplated offer must treat the information as secret and may only pass it to another person if it is necessary to do so for purposes of the offer and if that person is made aware of the need for secrecy. All such persons must conduct themselves so as to minimise the chances of an accidental leak of information.~~

~~If an offer is contemplated a close watch should be kept on the offeror's shares. In the event of any undue movement in the share price or a significant increase in the volume of share turnover, an immediate announcement should be made by the offeror's board of directors, accompanied by such comment as may be appropriate.~~

12. — Standard of care and responsibility

~~Any document or advertisement addressed to an offeree should state that the directors of the offeror have taken all reasonable care to ensure that the facts stated are accurate, the opinions expressed have been arrived at after due and careful consideration, and that no material information has been omitted. It must also be stated that all directors, including any directors who may have delegated detailed supervision of the document to a committee or an individual director, jointly and severally accept responsibility. If it is proposed that any director should be excluded from such a statement, the Executive's consent is~~

~~required. In such cases, the exclusion and reasons for it should be stated in the document or advertisement.~~

~~13. Conditions~~

~~A general offer cannot be made conditional upon the acquisition of a minimum number of shares.~~

~~Any condition to which the offer is subject must be stated in the announcement of the terms of the offer contemplated by Rule 10.~~

~~An offer must not normally be made subject to conditions which depend upon subjective judgements by the offeror or the fulfilment of which rests with the offeror.~~

~~Note:~~

~~*An element of subjectivity*~~

~~*The Executive may be prepared to accept an element of subjectivity in certain special circumstances where it is not practicable to specify all the factors on which satisfaction of a particular condition may depend, especially in cases involving official authorisations, the granting of which may be subject to additional material obligations for the offeror.*~~

~~14. When shares to be taken up and paid for~~

~~Shares that have been tendered to an offer as at, or following, the later of the date the offer is approved by shareholders and the date the offer becomes or is declared unconditional shall be taken up and paid for as soon as practicable but in any event within five days of the expiry of the offer. Shares shall not be taken up until the later of the date the offer is approved by shareholders and the date the offer becomes or is declared unconditional. Any securities that are taken up by the offeror under the offer shall be paid for as soon as possible but in any event within five days of the date on which the shares are taken up. Any shares tendered to an offer subsequent to the date on which the offeror first takes up shares tendered to the offer shall be taken up and paid for within five days of the date such shares are tendered.~~

~~15. Withdrawal or lapse of an offer~~

~~Subject to Rule 4, once the terms of an offer have been announced the offeror shall proceed with the offer unless the posting of the offer document is subject to the prior fulfilment of a specific condition and that condition has not been met.~~

~~If an offeror fails to proceed with an offer or if an offer lapses because of the non-fulfilment of a condition the offeror must make an announcement giving reasons for not proceeding with the offer. The offeror must also ensure that share certificates are posted to, or are available for collection by, those~~

~~offerees who accepted the offer as soon as possible but in any event within seven days of the date that the offer lapses or is withdrawn.~~

Note:

Invoking conditions

~~An offeror should not invoke any condition, other than the acceptance condition, so as to cause the offer to lapse unless the circumstances which give rise to the right to invoke the condition are of material significance to the offeror in the context of the offer.~~

16. Shareholder solicitations

~~A company proposing to solicit proxies, votes or acceptance of offers may only use for such purpose previously published information which remains accurate, and is not misleading at the time it is quoted.~~

~~Except with the consent of the Executive, non-institutional shareholders may only be solicited by staff of the financial adviser to the soliciting company who are fully conversant with the requirements of, and their responsibilities under, the Code.~~

~~Shareholders must not be put under pressure and must be encouraged to consult their professional advisers.~~

17. Waivers, referrals and appeals

~~The Executive may, upon the application of an offeror or any other person with an interest in a share repurchase, waive compliance with one or more of the provisions of the Code.~~

Note:

Non-voting fixed participation shares

~~The Executive will normally grant a general waiver from compliance with the Code for offers proposed to be made for non-voting fixed participation shares which are more analogous to debt securities than equity securities.~~