

## **Practice Note 22 (PN22) – Material contracts and documents on display**

1. This Practice Note aims to provide guidance on the interpretation of material contracts under the Code requirements.
2. Paragraph 9 of Schedule II to the Takeovers Code requires disclosure in the offeree board circular of details of every material contract entered into by the offeree company or any of its subsidiaries after the date two years before commencement of the offer period. A similar requirement exists for the offeror during a securities exchange offer under paragraph 26 of Schedule I.
3. Under Note 1(i) to Rule 8 of the Takeover Code, material contracts must be made available for inspection on the website of the issuer of the offer document or offeree board circular from the time the relevant document is published until the end of the offer period, along with other documents required under Note 1. Typically these documents are also displayed on the websites of the SFC and the Stock Exchange (in the form of a hyperlink to the SFC's website) during such period.
4. Under the Codes, material contracts do not include contracts that are 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 (or the offeror or any of its subsidiaries, in the case of a securities exchange offer).
5. To assist issuers of documents and their advisers to comply with Code requirements and to ensure a consistent practice in the market, going forward, the Executive would expect that as a starting point, all contracts relating to discloseable transactions under the Listing Rules should normally be treated as material contracts for the purposes of the Code. Obviously, contracts for transactions with percentage ratios that reach the thresholds for major transactions, very substantial disposals, very substantial acquisitions and reverse takeovers under the

Listing Rules would normally also be caught. This is not by any means an exhaustive list. If any contract that falls below the tests for discloseable transactions but is otherwise material and not entered in the ordinary course of the offeree company's business (or of the offeror, as appropriate), such contract remains subject to the disclosure requirements under the Codes.

6. The requirement to disclose details of material contracts and to arrange for them to be put on display facilitates transparency and is consistent with General Principle 5, which provides that shareholders must be given sufficient information, advice and time to reach an informed decision on an offer.
7. The Executive also notes that the reference to Listing Rules thresholds in the context of Code matters has also been adopted in Rule 4 (no frustrating action). Under Note 6 to Rule 4, in determining whether a disposal or acquisition is of a "material amount" to constitute a frustrating action during an offer period, the same tests as those set out in the Listing Rules to determine whether a transaction is a discloseable transaction are applied. The Executive believes this approach with respect to material contracts will help bring the two sets of regulatory requirements into further alignment to assist compliance by issuers and market practitioners.
8. Following the close of an offer period, the documents on display on the websites of the SFC, as well as the hyperlink on the Stock Exchange's website, will be removed in accordance with Note 1 to Rule 8 of the Takeovers Code.
9. If any party is in doubt as to whether a contract should be included or excluded as a material contract, the Executive should be consulted at the earliest opportunity.

31 December 2018