

Practice Note 24 (PN24) – Receivers, liquidators and when to commence offer period(s)

In Takeovers Bulletin No. 52 issued in March 2020, we clarified that where an independent receiver or liquidator is appointed over a controlling interest in a Hong Kong public company (i.e. 30% or more of the voting rights), this will give rise to a possible offer on the expectation that the receiver or liquidator would act swiftly to sell the shares and accordingly, an announcement under Rule 3.7 of the Takeovers Code should be published.

The Executive has the following observations since the publication of Takeovers Bulletin No. 52:

- (1) While receivers, liquidators and offeree companies generally comply with the initial requirement to issue an announcement pursuant to Rule 3.7 of the Takeovers Code, a number of these cases did not result in any offer or change of control. In some cases, there had been little, if any, developments for over two years since the appointment of the relevant receiver or liquidator, in contrast to the expectation that the secured assets would be disposed of shortly after the appointment.
- (2) In many instances, the relevant receiver or liquidator may not be actively seeking or negotiating with a potential purchaser (this could be due to market factors or a lack of interest in the relevant assets). In other instances, there may be settlement talks between the lender and the borrower.
- (3) Under the Takeovers Code, offeree companies are subject to a range of restrictions (such as the rules relating to frustrating actions) to their normal operations and additional compliance requirements (such as reporting on profit forecasts) during an offer period. A prolonged offer period with no substantive developments on a possible offer, and no real prospect of an offer, while subjecting the offeree companies to such restrictions and obligations may be unduly burdensome on the offeree company and may not be in the best interests of its shareholders.

In view of the above observations, the Executive considers inappropriate to keep an offer period open or to commence an offer period when there is unlikely to be an imminent offer. There may also be possible false market concerns for an offeree company to be in an offer period when, in reality, there is unlikely to be an imminent offer.

Accordingly, the Executive will treat the appointment of an independent receiver or liquidator over a controlling interest in a Hong Kong public company as follows:

- (A) Going forward, the Executive will no longer expect an offer period to commence upon the appointment of a receiver or liquidator even if this may result in a possible change of control unless the receiver or liquidator indicates that: (i) it is actively looking for a potential purchaser for the controlling stake; or (ii) it is already in discussion with a potential purchaser over the controlling stake.
- (B) An offeree company should make appropriate enquiries with the receiver or liquidator and submit a draft Rule 3.7 announcement to the Executive for

vetting if the case falls under (A)(i) or (ii) above. In the draft announcement, the offeree company should disclose the appointment of a receiver or liquidator and the reason(s) for commencing an offer period. Following the commencement of the offer period, the offeree company will be required to publish monthly update announcements in line with existing practice and as required under Rule 3.7.

- (C) In cases where the appointment of a receiver or liquidator did not initially result in the commencement of an offer period, the receiver or liquidator and any future potential purchaser should take all necessary steps to maintain confidentiality of information relating to a possible offer (such as, negotiations on the disposal of the controlling stake) and to ensure there is no leakage of such information.¹ An offer period would only commence upon the issue of a Rule 3.5 firm intention announcement or a Rule 3.7 “talks” announcement which should only be made if an obligation to issue an announcement under Rule 3.1, Rule 3.2 or Rule 3.3 arises (for example, where there is a rumour or speculation about a possible offer or an undue movement in share price). This treatment is analogous to the Executive’s approach to talks between a controlling shareholder and a potential purchaser over the sale of a controlling stake and the same principles would apply.²
- (D) In respect of an offeree company which is in an offer period and has been so over an extended period of time following the appointment of a receiver or liquidator, if there is a reason to believe that an offer is unlikely to be imminent, the relevant offeree company is encouraged to consult with the Executive to end the offer period.

This Practice Note does not affect a party’s disclosure obligations under Part XIVA of the Securities and Futures Ordinance.

18 November 2022

¹ Under Rule 1.4 of the [Takeovers Code](#), all persons privy to confidential information, and particularly price-sensitive information, concerning an offer or contemplated offer must treat that information as secret and may only pass it to another person if it is necessary to do so and if the other person understands the need for secrecy. All such persons must conduct themselves so as to minimise the chances of an accidental leak of information.

² Please refer to [Takeovers Bulletin No 40 \(March 2017\)](#) and [37 \(June 2016\)](#) regarding confidentiality and talks announcements.