



Takeovers Bulletin

Highlights

- Redaction from Documents on Display
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Redaction from Documents on Display

The Executive has recently received a number of last-minute proposals to redact information from documents required to be displayed online and made available for inspection (**DoDs**) under Note 1 to Rule 8 of the Takeovers Code. In a few cases, the redaction proposal was made only after the unredacted version was uploaded onto the SFC's portal, WINGS, for publication on the SFC's website.

We would like to remind market participants that any redaction proposals should be discussed with the Executive as early as possible and in any event before submission of the relevant DoDs to WINGS in order to avoid delays in the display of the DoDs and the despatch¹ of the related offer document or offeree board circular.

The Executive recognises that service contracts and certain other DoDs may contain sensitive personal data such as passport or HKID numbers and residential addresses. Where public disclosure of any personal information is prohibited under the Personal Data (Privacy) Ordinance (Cap. 486) or similar laws in other relevant jurisdictions (eg. in the absence of the consent of the data subject), we consider it necessary and appropriate for such information (**Protected Personal Information**) to be redacted from DoDs. It is the responsibility of the offeror and the offeree company (as the case may be) to seek advice and assistance from their advisers where necessary, and identify and redact any Protected Personal Information contained in DoDs before uploading the files to WINGS to ensure full compliance with relevant privacy laws.

¹ Under Notes 1 and 2 to Rule 8 of the Takeovers Code, each DoD must be (i) put on display from the date the offer document or the offeree board circular is published until the end of the offer period, and (ii) submitted in electronic form to the Executive, *before* the despatch of the relevant document to shareholders, for display on the SFC's website.

To facilitate the Executive's consideration of any redaction proposals, the parties should provide the following documents:

1. a submission explaining the basis of the redaction proposal;
2. a copy of the proposed redacted version of the DoD, showing clearly the redactions and setting out, on the front page, the following²:
 - (a) a statement to the effect that certain information contained in the document has been redacted, together with a brief description of the nature of the information redacted and reasons for redaction; and
 - (b) a confirmation that the remaining information is considered adequate by (i) the offeror/offeree company and its directors, (ii) the financial adviser to the offeror/offeree company for the purpose of disclosing the nature and significance of the document, and for the offeror/offeree company to fulfil its relevant disclosure obligations under the Codes on Takeovers and Mergers and Share Buy-backs;
3. written confirmations from the offeror or the offeree company as well as its directors and financial adviser in a form identical or substantially similar to the confirmation referred to in paragraph 2(b) above.

As always, the Executive should be consulted at the earliest opportunity if there is any doubt as to whether certain information may be redacted from the DoDs.

Disclosures of effects of dividends and other distributions on offer price

An offeror shall be bound by any firm statements it has made as to the finality of its offer³ and normally may not withdraw its offer⁴. An offeror must not make a statement to the effect that it may improve its offer without committing itself to doing so and specifying the improvement⁵.

If an offeror intends to reduce⁶ the offer consideration in the event of any dividends or other distributions which might subsequently be paid or become payable by the offeree company, the offeror must specifically reserve⁷ the right to do so in the Rule 3.5 announcement, indicating clearly whether the reduction will be equivalent to all or a quantified portion of the specified dividend or other distribution. In the absence of a clear indication of its intention, the offeror should not deduct any subsequent dividends or other distributions from the offer consideration⁸.

In contrast, an offeror is normally free to increase the offer consideration after a Rule 3.5 announcement unless it has made a "no increase" statement. Under Note 4 to Rule 18 of the Takeovers Code, only in wholly exceptional circumstances will an offeror be allowed to amend the terms of its offer if it has made a "no increase" statement without specifically reserving⁹ the right to set aside that statement.

² These statements must be shown in red in the published version of the DoD.

³ Note 1 to Rule 18 of the Takeovers Code.

⁴ Save in the circumstances specified in Rule 5 of the Takeovers Code.

⁵ Rule 18.1 of the Takeovers Code.

⁶ To the extent that the overall value receivable by offeree company shareholders (in the form of a dividends or other distributions and the offer consideration) shall remain unchanged.

⁷ See Note 11 to Rule 23.1 of the Takeovers Code.

⁸ See the Takeovers and Mergers Panel's decision relating to Dalian Port (PDA) Company Limited (2019).

⁹ Note 4 to Rule 18 of the Takeovers Code provides that the reservation must not depend solely on subjective judgements by the offeror or its directors or the fulfilment of which is in their hands.

Therefore, if an offeror makes a “no increase” statement but does not intend to reduce the offer consideration by the entire amount of any subsequent dividends or other distributions, it should explain its intention with regard to dividends or other distributions at the same time as it makes the “no increase” statement. The explanation should state the extent¹⁰ to which shareholders will be entitled to receive any subsequent dividends or other distributions *in addition to* the offer consideration.

Offeree company shareholders rely on the information in the Codes documents in making an informed decision as to the merits of an offer. Unclear statements relating to the effects of dividends or distributions on the offer consideration would create uncertainties and may mislead shareholders and the market. It is important that the offeror ensure that all public statements disseminated during the course of the offer are clear and unambiguous.

Revisions to Practice Note 9

We have revised Practice Note 9 to provide further guidance on the factors that the Executive will normally take into account when considering a

financial group's eligibility to apply for the exempt fund manager or exempt principal trader status under the “fast-track” method.

A [marked-up version](#) and a [clean version](#) of the revised Practice Note 9 can be found in the “[Regulatory functions – Corporates – Takeovers and mergers – Practice notes](#)” section of the SFC website.

Quarterly update on the activities of Takeovers Team

From April to June 2025, we received 25 takeovers-related cases (including privatisations, voluntary and mandatory general offers, and off-market and general-offer share buy-backs), seven whitewashes and 85 ruling applications.

Useful links

- The Codes on Takeovers and Mergers and Share Buy-backs
- Practice notes
- Decisions and statements
- Previous *Takeovers Bulletins*

¹⁰ That is, whether offeree company shareholders will be entitled to all or part of the specified dividend or distribution and, in case of partial entitlement, the bases to be adopted in determining the amount or percentage of their entitlements.

All issues of the *Takeovers Bulletin* are available under ‘Published resources – Newsletters – Takeovers Bulletin’ on the SFC website at www.sfc.hk.

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