



# Takeovers Bulletin

## Highlights

- Partners in limited partnerships
- Switches between scheme of arrangement and contractual offer
- Compliance with Share Buy-backs Code for buy-backs of convertible securities
- New Practice Note 28 – listed closed-ended alternative assets funds
- Quarterly update on activities of Takeovers Team

## Partners in limited partnerships

Private equity funds are often structured as limited partnerships. From time to time, we receive enquiries regarding whether all or certain specified partners in limited partnerships will be treated as acting in concert for the purpose of the Takeovers Code and the Share Buy-backs Code (**Codes**).

Under class (7) of the presumption of "acting in concert", "partners" are presumed to be acting in concert with one another. By contrast, under presumption class (1), shareholders of a company are presumed to be acting in concert with one another and with that company if they hold 20% or more of the voting rights of that company.

In a limited partnership, general partners are responsible for managing the assets of the partnership whereas limited partners are normally passive investors with limited influence over the activity of the limited partnership except for voting on changes to the general partner or other material terms of the partnership. It is possible that a limited partner does not know the identities of other limited partners.

In light of this, we recognise that limited partners in a limited partnership are more analogous to shareholders of a company than to partners in an unlimited partnership, whereas general partners are akin to directors of a company. Therefore, in practice, the Executive will not automatically treat limited partners in a limited partnership as acting in concert with one another or with the general partner by virtue of presumption class (7) if their only connection is their common interests in the partnership; and the partners in question are not holding 20% or more of the economic interests in the partnership or voting rights over key matters of the partnership.

In considering the relationship between a partner and the relevant limited partnership or any bid vehicle established by the partnership, the Executive will apply the spirit of presumption classes (1) and (2). Therefore, general partners will be presumed to be acting in concert with the limited partnership and the relevant bid vehicle, but a limited partner will be similarly presumed if it holds 20% or more of the voting rights over, or economic interests in, the partnership or is otherwise involved in the making or approval of the partnership's investment decision.

As always, assessment of "acting in concert" is a fact-based process. On one hand, persons falling outside the presumptions may still be regarded as concert parties for the purpose of the Codes having regard to the specific circumstances in each case. On the other hand, parties may rebut any presumptions by submitting relevant information to the Executive. The Executive will make necessary enquiries<sup>1</sup> to ascertain the relationships between different parties where necessary. Parties should consult the Executive if in doubt as to the application of the concert party rules in a specific scenario.

### Switches between scheme of arrangement and contractual offer

General Principle 4 provides that an offeror should announce an offer only after careful and responsible consideration. Under Rules 5 and 16.2 of the Takeovers Code, an offeror may not withdraw an offer after issuing a "firm intention" statement except with the Executive's consent and may introduce new conditions only to the extent necessary to implement a revised offer and permitted by the Executive.

The Executive has received enquiries regarding whether an offeror may, during the offer period, change the transaction structure from a scheme of arrangement to a contractual offer or vice versa when the circumstances have changed beyond the reasonable contemplation of the offeror when the offer is announced such that the revised structure is

considered more appropriate. An example is where a competing offer is announced after an offeror proposes to acquire or privatise the company by way of a scheme of arrangement. As a contractual offer is commonly perceived as being more flexible than the statutory process of a scheme of arrangement, the first offeror might wish to switch the transaction structure for more flexibility in revising its offer in light of the competing offer.

In the event of a switch, the conditionality of the transaction will inevitably change since the acceptance condition to a contractual offer operates quite differently from the shareholder approval threshold for a scheme of arrangement<sup>2</sup>. A switch is therefore tantamount to a withdrawal of an offer or the introduction of new conditions, both of which require the Executive's consent.

In considering whether to give consent to a proposed switch, the Executive will take into account the views of the offeree company's independent board committee and independent financial adviser as to the effects of the proposed switch on the interests of the offeree company's shareholders. The particular circumstances of the transaction will be relevant, including the stage of the offer process, the reasons for the proposed switch<sup>3</sup> and the likely impact on the deliverability<sup>4</sup> of the offer.

A request for the Executive's consent is more likely to be considered favourably if the switch is expected to make the offer more likely to become unconditional and hence deliverable. Examples of

- 1 Enquiries may include, for example, whether the limited partner in question is a member of the limited partnership advisory committee or similar committees, and the functions and roles of such committees under the limited partnership agreement.
- 2 For example, even when the acceptance condition is set at 75%, being the same as the percentage threshold required for the approval of a scheme of arrangement under Rule 2.10 of the Takeovers Code, the denominator used in determining the percentage for a contractual offer is the total number of disinterested shares whereas the denominator used for the 75% test in relation to a scheme of arrangement is the votes attaching to disinterested shares that are cast either in person or by proxy at the relevant shareholders' meeting.
- 3 For example, where, after a scheme of arrangement has been announced, the offeree board takes actions to cause the scheme to lapse, for example, by proposing not to petition the court to sanction the scheme and not to seek shareholders' approval at a general meeting.
- 4 Deliverability refers to the likelihood of the offer becoming or being declared unconditional.

switches that are likely to increase deliverability are a change from a scheme to a contractual offer with a 50% acceptance condition or a change from a contractual offer with a 90% acceptance condition to a scheme<sup>5</sup>.

To apply for the Executive's consent to a switch, there is no need for the offeror to have reserved the right to switch the transaction structure in its offer announcement or document. However, the offeror must announce details of the switch as soon as reasonably practicable after the consent is obtained, including, without limitation, changes to the terms and conditions of the offer, the revised timetable as agreed with the Executive and whether any irrevocable commitments or letters of intention procured by the offeror or its concert parties will remain valid following the switch.

The Executive should be consulted at the earliest possibility.

### Compliance with Share Buy-backs Code for buy-backs of convertible securities

For the purposes of the Share Buy-backs Code, "shares" include securities which carry a right to subscribe for or purchase shares issued directly or indirectly by a company or its subsidiaries. Therefore, if an issuer primarily listed in Hong Kong or any of its subsidiaries buys back the convertible securities, warrants or options issued by it by way of an off-market transaction or a general offer, it shall comply with the requirements of the Share Buy-backs Code unless the transaction constitutes an exempt share buy-back or a waiver is obtained under Rule 8 of the Share Buy-backs Code, for example, because the securities being bought back are more analogous to debt than equity having regard to the facts and circumstances of the company.

Limb (2) of the definition of "exempt share buy-back" refers to "a share buy-back **made in accordance with the terms and conditions** attached to the shares being bought back which either permit or require such share buy-back **without the prior agreement of the owners of the shares**" (emphases added). Practice Note 16 (PN 16) (issued in 2009, as amended in 2023) makes it clear that the reference to the "terms and conditions attached to the shares" is not restricted to the initial terms and conditions attached to the shares at the time of the issue but applies to relevant terms and conditions that prevail at the time of the buy-back.

Having come across different cases involving redemptions or purchases of securities, we would like to clarify that limb (2) of the definition of "exempt share buy-back" is intended to refer to the situation where neither the buy-back nor the terms and conditions thereof (such as the consideration payable) require separate negotiation, or are subject to separate agreement, with the holders of the securities being bought back. This means that if an issuer initiates a buy-back off the market or by way of a general offer and the relevant holders have the discretion to decide whether to sell their holdings at the buy-back price offered by the issuer, the buy-back is not an "exempt share buy-back" under limb (2) of the definition.

We have revised PN 16 to clarify the meaning of "exempt share buy-back". If an issuer has any doubt as to the application of the Share Buy-backs Code to a proposed buy-back or considers itself to be eligible for a waiver under Rule 8 of the Share Buy-backs Code, it is encouraged to consult the Executive.

The revised PN 16 will take effect from 1 July 2026.

A [marked-up version](#) and a [clean version](#) of revised PN 16 can be found in the "[Regulatory functions – Corporates – Takeovers and mergers – Practice notes](#)" section of the SFC website.

<sup>5</sup> Assuming other commercial terms remain unchanged or are substantially the same as before.

## New Practice Note 28 on listed closed-ended alternative assets funds

Listed closed-ended alternative asset funds (**LAFs**) refer to closed-ended collective investment schemes investing mainly in private, illiquid assets, authorised by the SFC pursuant to section 104 of the Securities and Futures Ordinance and 8.11 of the Code on Unit Trusts and Mutual Funds (**UT Code**), and listed on the Stock Exchange under Chapter 20 of the Main Board Listing Rules. In February 2025, the Commission issued a circular clarifying the requirements when considering the authorisation of an LAF. This is followed by a further set of Frequently Asked Questions (**FAQs**) published on 30 June 2026, which elaborates on the requirements concerning takeovers and offers relating to an LAF<sup>6</sup>.

In connection with the FAQs, the Executive published new Practice Note 28 (PN 28) on 30 June 2026 to provide guidance to market practitioners on the application of the Codes to LAFs with a primary listing in Hong Kong.

As stated in PN 28, given the similarities of LAFs and real estate investment trusts (REITs) in terms of governance structure, our approach to LAFs largely follows the approach adopted for REITs.

For details and further guidance, please refer to [PN 28](#), which 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 January to March 2026, we received 15 takeovers-related cases (including privatisations, voluntary and mandatory general offers, and off-market and general-offer share buy-backs), two whitewashes and 58 ruling applications.

### Useful links

- [The Codes on Takeovers and Mergers and Share Buy-backs](#)
- [Practice notes](#)
- [Decisions and statements](#)
- [Previous \*Takeovers Bulletins\*](#)

6 To maintain a level playing field and ensure due compliance with 8.11(i) of the UT Code, all takeovers, mergers and share buy-backs affecting an LAF, whether structured in corporate or non-corporate form, are required to, inter alia, comply with the principles and rules of the Codes unless otherwise permitted by the SFC in advance. The constitutive document of an LAF should also provide that no issuance, repurchase, buy-back or redemption of any units/shares of the LAF may be conducted unless and until they are undertaken in accordance with applicable legal and regulatory requirements (including the UT Code and the Codes), save as otherwise waived.

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Securities and Futures Commission  
54/F, One Island East,  
18 Westlands Road,  
Quarry Bay, Hong Kong

(852) 2231 1222  
[enquiry@sfc.hk](mailto:enquiry@sfc.hk)  
[www.sfc.hk](http://www.sfc.hk)