

An SFC newsletter to help participants in Hong Kong's financial markets better understand the Codes on Takeovers and Mergers and Share Buy-backs

Feedback and comments:  
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## Public consultation on proposed amendments to the Takeovers Code and Share Buy-backs Code

The SFC issued a public consultation paper on 19 January 2018 regarding proposed amendments to the Codes on Takeovers and Mergers and Share Buy-backs. The consultation period will last for three months and a conclusions paper will be issued in due course.

The consultation paper contains six parts:

Part 1 proposes to introduce a number of provisions which clarify (i) the obligations of parties when dealing with the Executive, the Takeovers and Mergers Panel (Panel) and the Takeovers Appeal Committee (Appeal Committee) and (ii) the power of the Executive, the Panel and the Appeal Committee to make compliance rulings as pre-emptive measures to prevent breaches to protect shareholders. It also proposes to empower the Panel to require compensation to be paid to shareholders who have suffered as a result of a breach of certain provisions of the Codes.

Part 2 proposes to amend the definition of associate to eliminate overlap and potential inconsistencies that arise out of the similarities between the definition of associate and the definition of acting in concert.

Part 3 proposes to raise the voting approval threshold for whitewash waivers from a simple majority of independent votes to 75%, and to introduce an explicit requirement to require separate resolutions to be put to independent shareholders for the underlying transaction(s) and the whitewash waiver.

Part 4 aims to provide a level playing field for companies incorporated in jurisdictions which have no compulsory acquisition rights (such as the Mainland) that seek to delist in Hong Kong through a general offer. In such cases, it is proposed that appropriate measures should be put in place to protect minority shareholders.

## Highlights

- Public consultation on proposed Code amendments

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Part 5 proposes to clarify the scope of disclosure of holdings and dealings in relevant securities, in particular where the offeror is offering securities of another company as consideration. It is also proposed to relax some requirements including the timing of dealing disclosures.

Part 6 proposes various miscellaneous amendments to the Codes to codify existing practice and to effect a number of “housekeeping” amendments.

The consultation paper can be found in the “Regulatory functions – Listings & takeovers – Takeovers & Mergers – Consultations” section of the SFC website. Interested parties are invited to submit their comments to the SFC by 19 April 2018 via the SFC website ([www.sfc.hk](http://www.sfc.hk)), by e-mail to [takeoverscode\\_review@sfc.hk](mailto:takeoverscode_review@sfc.hk), by post or by fax to 2810 5385.

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#### Useful links

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

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All issues of the *Takeovers Bulletin* are available under ‘Published resources – Industry-related publications – *Takeovers Bulletin*’ on the SFC website at [www.sfc.hk](http://www.sfc.hk).

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