

THE TAKEOVERS AND MERGERS PANEL

DISCIPLINARY HEARINGS

RULES OF PROCEDURE

1. Interpretation

1.1 Definitions in the Codes also apply to these Rules of Procedure.

1.2 In these Rules –

“Chairman” means the Chairman of the Panel convened to hear proceedings initiated under section 12.1 of the Introduction to the Codes;

“Codes” means the Codes on Takeovers and Mergers and Share Buy-backs;

“Panel” means the Panel convened to hear proceedings initiated under section 12.1 of the Introduction to the Codes;

“party”/“parties” means either or both of the Executive and the respondent(s);

“respondent(s)” means the person(s) against whom proceedings are brought by the Executive; and

“Secretary” means the Secretary to the Panel.

2. Point of contact

2.1 The Secretary will be the point of contact for all parties in respect of any procedural matter. Unless the Secretary specifies an alternative means of communication, such as e-mail or facsimile, all communications should be addressed to the Secretary to the Takeovers Panel, Securities and Futures Commission, 35/F, Cheung Kong Center, 2 Queen’s Road Central, Hong Kong and copied to all parties.

3. Initiating disciplinary proceedings

3.1 The Executive will initiate proceedings by submitting a paper setting out its case to the Secretary and to the respondents in the proceedings.

4. Response submission

4.1 Respondents to disciplinary proceedings will normally have 28 days to deliver a submission and supporting documents in response to the Executive’s paper.

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5. Membership of the Panel

- 5.1 Following initiation of the proceedings by the Executive a member of the Disciplinary Chair Committee will act as the Chairman of the hearing.
- 5.2 The Chairman will appoint not less than 4 members of the Panel to be members of the hearing.
- 5.3 Members of the Panel should raise with the Secretary any concerns over possible conflicts of interest at the earliest opportunity in accordance with the Conflicts of Interest Guidelines referred to in section 13.1 of the Introduction to the Codes. The Secretary will notify the parties of the names of the Chairman and members of the Panel.
- 5.4 Parties must raise any concerns over possible conflicts of interest at the earliest opportunity.
- 5.5 Issues of conflicts of interest will be considered and ruled upon by the Chairman with reference to the Conflicts of Interest Guidelines.
- 5.6 The Chairman will resolve any concerns over possible conflicts of interest that he may have in accordance with the Conflicts of Interest Guidelines as they apply to the Chairman of the Panel.

6. Directions

- 6.1 In all cases the Chairman may give such preliminary or procedural directions as he considers appropriate for the determination of a matter without the need for a hearing.
- 6.2 The Chairman may give directions in writing to the parties specifying -
 - (a) the dates by which the respondent must deliver its submissions and supporting documents in response to the Executive's submissions;
 - (b) if considered appropriate, the dates by which the Executive must deliver its submissions and supporting documents in reply to the respondent's submissions; and
 - (c) the dates by which the Executive and the respondent(s) must file their witness statements;

and giving such further directions as he considers appropriate.

7. Extensions of time and failure to comply with directions

- 7.1 If a party has reason to seek an extension of time for complying with a direction or time limit, the party should apply in writing setting out the reason. Reasonable requests for time extensions will be considered and may be granted in the sole discretion of the Chairman.

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7.2 If a party fails, without reasonable excuse, to comply with any direction of the Chairman or any time limit, the Panel may proceed as if it had been notified by the party that he will not be serving any document under that direction or in accordance with that time limit. Without prejudice to the powers of the Panel, including the power to receive and consider such evidence as it thinks fit and to draw inferences, the Panel may draw such adverse inferences from the failure to comply with the direction or time limit as it thinks fit. The Chairman may in his discretion accept or reject documents and/or submissions that have been filed late.

8. Statement of agreed facts

8.1 The Panel or its Chairman may direct the parties to deliver a statement of agreed facts. The statement must set out the matters of fact which are not in dispute and state whether any party disputes a fact alleged by another party, with reasons why. The burden of proving a disputed fact rests on the party alleging it.

9. Fixing a date for the hearing

9.1 The Chairman will fix a date, time and place for any hearing.

9.2 The Panel or the Chairman may sit at such times and in such places as either it or he deems most convenient and appropriate in all the circumstances.

9.3 Whilst the Chairman will consult the parties before fixing a date, this is a matter of courtesy and convenience. A party may not dictate the date of a hearing, whether original or adjourned.

9.4 The Chairman will consider, in his sole discretion, timely requests for an adjournment supported by reasons from the parties, and may require evidence of the circumstances being put forward in support of an application. Adjournments will rarely be granted and late applications for an adjournment will only be considered in the most exceptional circumstances.

9.5 A party does not have a right to insist that a hearing should be adjourned to a date convenient to a particular witness or legal or professional adviser.

10. The burden of proof

10.1 The burden of proving an allegation rests on the party making it.

11. The standard of proof

11.1 Proceedings before the Panel are civil in nature. Accordingly, the standard of proof is on the balance of probabilities.

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12. Failure of the parties to attend

- 12.1 If a party fails to be present or represented at a hearing the Panel may, if it is satisfied that the party was duly notified of the hearing and either that no good reason for such absence has been given to it or for the fair and just conduct and determination of the matter, hear and decide the matter before it in the party's absence.
- 12.2 Before deciding to dispose of any hearing in the absence of a party the Panel must consider the representations in writing, if any, submitted by that party.

13. The hearing

- 13.1 The proceedings of the Panel are informal. The Chairman will conduct the proceedings in the manner he considers suitable for the clarification of the issues before it and generally for the just handling of the proceedings. Unless otherwise directed by the Chairman the hearing will be conducted as follows:
- (a) At the beginning of the hearing the Chairman will make a short opening statement to explain the manner and order of the proceedings.
 - (b) Normally, after a short opening statement by the Chairman, the Executive and the parties will be invited to make short opening submissions to the Panel (normally the Executive will speak first).
 - (c) After the opening submissions, the Executive and then the parties will be invited to present their case (again the Executive will normally speak first). The Executive and the parties will be given an opportunity to address the Panel, to present evidence to the Panel, subject to the service of witness statements (see paragraph 13.4 below) to call witnesses, to question any witnesses and to address the Panel both on the evidence and generally on the subject matter of the hearing.
 - (d) The Panel may ask questions of the parties or their witnesses. Persons answering questions are expected to do so directly and without conferring with their professional or legal advisers.
 - (e) Finally the parties will be invited to make closing submissions if they wish to do so in the same order as the opening submissions.
- 13.2 At hearings before the Panel, the Panel may, at its full discretion, admit or reject any evidence adduced, whether oral or written. The Evidence Ordinance (Cap. 8) and laws relating to the admissibility of evidence shall not apply.

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- 13.3 At hearings before the Panel the matter is usually presented in person by the parties and/or their advisers. Parties may, if they so wish, be represented by their legal advisers.
- 13.4 Any party may, subject to the consent of the Chairman, call witnesses at the hearing provided a statement of the evidence of the witness has been previously filed with the Secretary in accordance with the Chairman's directions.
- 13.5 The Panel or the Chairman may obtain advice from an independent professional adviser or an expert in any relevant area of practice. The substance of the advice will be disclosed to the parties in order that they may comment upon it prior to a decision being made. The Panel or the Chairman may seek to secure the attendance at the hearing of such adviser if it or he considers this to be necessary.
- 13.6 The Panel or its Chairman may request the attendance of witnesses at the hearing.
- 13.7 A recording of the hearing will normally be made for administrative purposes. A transcript of the hearing may also be made. Any party to the hearing may request a soft copy of the transcript, which will normally be provided, subject to confidentiality considerations.

14. The decision

- 14.1 The Panel will deliberate in the absence of the parties.
- 14.2 Following the conclusion of its deliberations the Panel may at its discretion inform the parties of its ruling and a summary of the reasons for the ruling orally. If the Panel decides to deliver an oral ruling, it is the policy of the Panel to hear submissions on sanctions immediately upon delivery of any oral ruling that there has been a breach of the Codes rather than waiting for the full written ruling to be delivered. In any event, the Panel will provide a copy of its ruling and the reasons for it in writing to the parties as soon as practicable following the hearing.
- 14.3 On determining the matter, the Panel may, in its ruling and in accordance with the Introduction to the Codes impose such sanctions and/or make such directions as appear to the Panel to be necessary and appropriate in the circumstances of the case. Where appropriate, the Panel may give directions regarding the effects of the Executive's ruling and/or sanctions (if any) and/or of its ruling and/or sanctions pending the outcome of an appeal (if any) to the Takeovers Appeal Committee.

15. Discrepancies

- 15.1 Where any discrepancy exists between the provisions of the Introduction to the Codes and these Rules of Procedure, the provisions of the Introduction to the Codes shall prevail.