

TAKEOVERS APPEAL COMMITTEE
RULES OF PROCEDURE

1 Interpretation

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

1.2 In these Rules –

“appellant(s)” means any party who lodges an appeal to the Takeovers Appeal Committee under section 14.5 of the Introduction to the Codes;

“Chairman” means the Chairman of the Takeovers Appeal Committee convened to hear a matter under section 14.2 of the Introduction to the Codes;

“Codes” mean 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 appellant(s) or the respondent;

“respondent” means the Executive responding to the appeal proceedings;
and

“Secretary” means the Secretary to the Takeovers Appeal Committee.

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 Appeal Committee, Securities and Futures Commission, 35/F, Cheung Kong Center, 2 Queen’s Road Central, Hong Kong and copied to all parties.

3 Initiating appeal proceedings

3.1 A party to a hearing before the Panel may appeal to the Takeovers Appeal Committee only on the grounds set out in section 14.2 of the Introduction to the Codes.

3.2 An application for appeal must be made in writing to the Takeovers Appeal Committee not later than 5 business days after the ruling in question. The application must state the full grounds of appeal together with reasons.

4 Response submissions

4.1 The respondent will normally be given 5 business days to deliver a submission in response to an application for appeal.

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5 Membership of the Takeovers Appeal Committee

- 5.1 Following initiation of the proceedings by an appellant a member of the Disciplinary Chair Committee will act as the Chairman of the hearing.
- 5.2 The Chairman will appoint not less than 2 members of the Panel who have not participated in the disciplinary proceedings in question to be members of the Takeovers Appeal Committee.
- 5.3 Members of the Takeovers Appeal Committee 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 Takeovers Appeal Committee.
- 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 any preliminary or procedural direction 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 appellant's submissions;
 - (b) if considered appropriate, the dates by which the appellant must deliver its submissions and supporting documents in reply to the respondent's submissions;

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 Takeovers Appeal Committee 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 Takeovers Appeal Committee, including the power to receive and consider such evidence as it thinks fit and to draw inferences, the Takeovers Appeal Committee may draw such adverse inferences from the failure to comply with the time limit or direction as it thinks fit. The Chairman may in his discretion accept or reject documents and/or submissions that have been filed late.

8 Fixing a date for the hearing

- 8.1 The Chairman will fix a date, time and place for any hearing.
- 8.2 The Takeovers Appeal Committee 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.
- 8.3 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.
- 8.4 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.
- 8.5 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.

9 Failure of the parties to attend

- 9.1 If a party fails to be present or represented at a hearing the Takeovers Appeal Committee may, if it is satisfied that the party was duly notified of the hearing and either that there is 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.
- 9.2 Before deciding to dispose of any hearing in the absence of a party the Takeovers Appeal Committee will consider the representations in writing, if any, submitted by that party.

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10 The hearing

10.1 The proceedings of the Takeovers Appeal Committee are informal. The Chairman will conduct the hearing 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 the short opening statement by the Chairman, the appellant will make its submissions to the Takeovers Appeal Committee. The respondent will then have an opportunity to make its submissions in response.
- (c) Finally, the parties will be invited to make any closing submissions if they wish to do so in the same order as the opening submissions.

10.2 At hearings before the Takeovers Appeal Committee 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.

10.3 An appeal under section 14.2 is not a rehearing and does not involve a review of the merits of any finding of breach or any finding of fact by the Panel. The hearing will take the form of a review of the written ruling of the Panel and the reasons contained therein for the ruling, and any related submissions both written and oral.

10.4 No new evidence may be admitted at hearings before the Takeovers Appeal Committee.

10.5 The Takeovers Appeal Committee 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 Takeovers Appeal Committee or the Chairman may seek to secure the attendance at the hearing of such adviser if it or he considers this to be necessary.

10.6 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.

11 The decision

11.1 The Takeovers Appeal Committee will deliberate in the absence of the parties.

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- 11.2 Following the conclusion of its deliberations, the Takeovers Appeal Committee may at its discretion inform the parties of its ruling and a summary of the reasons for the ruling orally. In any event, the Takeovers Appeal Committee will provide a copy of its ruling and the reasons for it in writing to the parties as soon as practicable following the hearing.
- 11.3 On determining the appeal, the Takeovers Appeal Committee 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 Takeovers Appeal Committee to be necessary and appropriate in the circumstances of the case.

12 Discrepancies

- 12.1 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.