

THE TAKEOVERS AND MERGERS PANEL

NON-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 –

“applicant” means any party who applies for a review under section 9.1 or the Executive where it refers a matter to the Panel under section 10.1 of the Introduction to the Codes;

“Chairman” means the Chairman of the Panel convened to hear a matter under sections 9.1 or 10.1 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 a matter under sections 9.1 or 10.1 of the Introduction to the Codes;

“party”/“parties” means either or both of the applicant and/or a party to the hearing; 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 at the offices of the Securities and Futures Commission from time to time, and copied to all parties.

3. Initiating proceedings before the Panel

3.1 The Executive and the Secretary must be notified of a request for a review as soon as possible and, in any event: (a) within such reasonable time as has been stipulated by the Executive; or (b) in the absence of such stipulation, within such time period as is reasonable in all the circumstances of the case, which period shall not be longer than 14 days from the event giving rise to the request for review, unless such period has been extended by the Executive. Any request for a review must be in writing and contain the grounds on which the review is requested.

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4. Membership of the Panel

- 4.1 If the Chairman of the Panel is available he will act as Chairman of the hearing. Where the Chairman is unavailable, he may select one of the Deputy Chairmen of the Panel to act as Chairman of the hearing. Where none of the Chairman or the Deputy Chairmen is available, the Chairman (or, failing that, at least 2 other members of the Panel) may appoint another member who is available to act as Chairman of the hearing.
- 4.2 The Chairman will appoint not less than 4 members of the Panel to participate in the hearing.
- 4.3 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 hearing the matter.
- 4.4 Parties must raise any concerns over possible conflicts of interest at the earliest opportunity.
- 4.5 Issues of conflicts of interest will be considered and ruled upon by the Chairman with reference to the Conflicts of Interest Guidelines.
- 4.6 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.

5. Directions

- 5.1 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. He may also deal with frivolous or vexatious requests that the Panel be convened. In such cases, the Chairman may determine the application or request without a hearing.
- 5.2 The Chairman may give directions in writing to the parties specifying –
 - (a) the dates by which the parties must deliver their submissions and supporting documents in response to the applicant's submissions;
 - (b) if considered appropriate, the dates by which the applicant must deliver its submissions and supporting documents in reply; and
 - (c) the dates by which the parties must file their witness statements;and giving such further directions as he considers appropriate.

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6. Extensions of time and failure to comply with directions

- 6.1 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.
- 6.2 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.

7. Statement of agreed facts

- 7.1 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.

8. Fixing a date for the hearing

- 8.1 The Chairman will fix a date, time and place for any hearing which in the discretion of the Chairman may be convened at short notice.
- 8.2 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.
- 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.

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9. Failure of the parties to attend

- 9.1 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.
- 9.2 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.

10. The hearing

- 10.1 The proceedings of the Panel 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 a short opening statement by the Chairman, the parties will be invited to present their case (the applicant will normally speak first). The parties will be given an opportunity to address the Panel, to present evidence to the Panel, subject to the service of witness statements to call witnesses (see paragraph 10.4 below), to question any witnesses and to address the Panel both on the evidence and generally on the subject matter of the hearing.
 - (c) 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.
 - (d) Finally the parties will be invited to make closing submissions if they wish to do so in the same order as the opening submissions.
- 10.2 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.
- 10.3 At hearings before the Panel the matter is usually presented in person by the parties and/or their financial advisers. Although not usual, parties may, if they so wish, be represented by their legal advisers.

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- 10.4 Any party may, subject to the consent of the Chairman, call witnesses at the hearing provided a witness statement of the evidence has been previously filed with the Secretary in accordance with the Chairman's directions.
- 10.5 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.
- 10.6 The Panel or its Chairman may request the attendance of witnesses at the hearing.
- 10.7 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.

11. The decision

- 11.1 The Panel will deliberate in the absence of the parties.
- 11.2 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. 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.
- 11.3 Any ruling of the Executive will stand pending determination of the proceedings before the Panel, unless otherwise directed by the Panel or its Chairman.

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.