



Takeovers Bulletin

Highlights

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- Presumption of acting in concert
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- Appointments and reappointments to the takeovers-related committees
- Quarterly update on the activities of the Takeovers Team

Disclosure of special deals in Rule 3.5 announcements

The Executive wishes to remind market practitioners and listed companies once again of the importance of full compliance with Rule 25 of the Takeovers Code. Rule 25 is an extension of General Principle 1 which provides that all shareholders are to be treated even-handedly.

To assist compliance with Rule 25, we have been requesting certain additional disclosures to be made in Rule 3.5 announcements. We are pleased to note that this helps parties to focus on the issue and the market has complied without difficulty. Going forward, as a matter of course the Executive will require the disclosure of the following matters in all Rule 3.5 announcements and documents:

- apart from the consideration for the sale shares, details of any other consideration, compensation or benefit in whatever form paid or to be paid by the offeror or any parties acting in concert with it to the vendor of sale shares or any party acting in concert with such vendor in connection with the sale and purchase of the sale shares;

- details of any understanding, arrangement, agreement or special deal between the offeror or any party acting in concert with it on the one hand, and the vendor of the sale shares and any party acting in concert with it on the other hand; and
- details of any understanding, arrangement or agreement or special deal between (1) any shareholder of the offeree company; and (2)(a) the offeror and any party acting in concert with it, or (b) the offeree company, its subsidiaries or associated companies.

Where no such matter or arrangement exists, a negative statement to this effect must be made.

Practice Note 17 also provides guidance on the Executive's approach to special deals. As always, if there is any doubt, parties and their advisers should consult us at the earliest opportunity.

Application of presumption of acting in concert – class (g)

Class (g) of the presumption of acting in concert presumes a person who provides finance or financial assistance (directly or indirectly) to another in connection with an acquisition of voting rights (including any direct or indirect refinancing of the funding of the acquisition) to be acting in concert. Authorised institutions within the meaning of the Banking Ordinance lending money in the ordinary course of business are expressly carved out from this presumption.

An individual, private company, licensed money lender, licensed broker or person licensed by the SFC to carry out securities margin financing would therefore normally be caught under the presumption. The seller of a controlling stake (ie, the original controlling shareholder) who is prepared to receive deferred payment of consideration for the sale shares from the offeror would also be caught.

When caught under the presumption, implications of concert party status under the Codes will apply to the lender. The Executive therefore wishes to remind parties to check carefully whether the lender has dealt in any relevant securities of the offeree company in the six months prior to (i) the date of the submission of the first draft of the Rule 3.5 announcement or (ii) the commencement of the offer period, whichever is earlier.

This should help parties to ensure that the relevant requirements of the Codes are met including those that arise under Rules 23, 24 and 26.3, or in the case of a whitewash transaction, to ensure that there is no disqualifying transaction that may prevent the Executive from granting a whitewash waiver or invalidate any whitewash waiver. See also paragraphs 16 and 17 of Practice Note 20. If in doubt, the Executive should be consulted at the earliest opportunity.

Use of email by the Executive

To increase efficiency and promote environmentally friendly practices, the Executive will gradually move towards using emails as the main channel of written communication with market practitioners. We encourage market practitioners to use email when communicating with us, and to provide the Executive with their preferred email contact addresses at the onset of a transaction or case, particularly when a special project account is set up for that transaction.

To ensure that relevant members of the Takeovers Team receive electronic communications, they should be sent to cfmailbox@sfc.hk. Market practitioners should refrain from directly emailing individual members of the Takeovers Team.

Appointments and reappointments to the takeovers-related committees

We welcome the following new appointments and reappointments of members to the Takeovers and Mergers Panel (Panel) and the Takeovers Appeal Committee (Appeal Committee) with effect from 1 April 2019:

New appointments – Ms Alexandra Bidlake and Mr Jackson Woo

Reappointments – Mr Stephen Clark (Chairman of the Panel and Appeal Committee), Mr Freeman Chan and Mr David Webb (Deputy Chairmen of the Panel and members of the Appeal Committee), Ms Melissa Brown, Mr David Fu, Mr Ernest Ip, Mr Bonn Liu, Ms Park Yoo Kyung, Mr Asit Shah, Mrs Judy Vas, Mr Wong Wai Ming and Mr Frank Yuen

Full list of members of takeovers-related committees

Members are appointed for a term of two years until 31 March 2021 unless otherwise stated. The membership lists for the Panel, the Appeal Committee, the Disciplinary Chair Committee and the Nominations Committee are set out below.

Panel

The Panel hears disciplinary matters in the first instance, reviews rulings by the Executive at the request of any party dissatisfied with such a ruling and considers novel, important or difficult cases referred to it by the Executive. It also reviews, upon request by the SFC, the provisions of the Codes and the Rules of Procedure for hearings under the Codes and recommends appropriate amendments to the Codes and Rules to the SFC.

Chairman

Mr CLARK Stephen Edward*

Deputy Chairmen

Mr CHAN Yuk Sing Freeman*
Ms KO Teresa Yuk Yin, JP
Mr LIU Chee Ming
Mr MAGUIRE John Martin
Mr WEBB David Michael*

Members

Ms BIDLAKE Alexandra*
Ms BROWN Melissa*
Mr CHAN Che Chung
Ms CHARLTON Julia Frances
Mr CHENG Wai Sun, Edward, GBS, JP#
Mr FU Yat Hung David*
Mr IP Koon Wing Ernest*
Ms LAM Chor Lai, Celia
Mr LEE Kam Hung Lawrence, BBS, JP
Mr LIU Yun Bonn*

Mr NORMAN David Michael
Mr NORRIS Nicholas Andrew
Ms PARK Yoo Kyung*
Mr SABINE Martin Nevil
Mr SCHWILLE Mark Andrew
Mr SHAH Asit Sudhir*
Mr SOUTAR James Alexander
Mrs VAS Chau Lai Kun Judy*
Mr WINTER Richard David
Mr WOLHARDT Julian Juul
Mr WONG Wai Ming*
Mr WONG Yu Tsang, Alex
Mr WOO Ka Biu Jackson*
Ms YU Ka Po, Benita
Mr YUEN Ka Fai*

Appeal Committee

The Appeal Committee reviews disciplinary rulings of the Panel for the sole purpose of determining whether any sanction imposed by the Panel is unfair or excessive. It comprises a Chairman who is a member of the Disciplinary Chair Committee and other members of the Panel who are selected on a case-by-case basis.

Disciplinary Chair Committee

Members are duly experienced senior counsels and their role is to act as Chairman of the Panel in disciplinary proceedings under the Codes or of the Appeal Committee on a case-by-case basis.

Members

Mr DAWES Victor, SC
Mr JAT Sew Tong, SC JP
Mr LAM Douglas Tak Yip, SC
Ms LI Gladys Veronica, SC
Mr SHIEH Wing Tai Paul, SC
Mr WONG Man Kit, Anson, SC

* Reappointed or appointed on 1 April 2019 for a two-year term until 31 March 2021.

Appointed for a term from 20 October 2018 to 19 October 2020.

Nominations Committee

The Nominations Committee nominates members of the Panel, Appeal Committee and Disciplinary Chair Committee.

Ex officio Members

Mr ALDER Ashley Ian, JP (Chairman)
Mr CLARK Stephen Edward
Mr HO Yin Tung Brian

Members

Mr LUI Tim Leung Tim SBS, JP#
Dr WONG Ming Fung William, SC

Alternate members to CLARK Stephen Edward

Mr CHAN Yuk Sing Freeman
Ms KO Teresa Yuk Yin, JP
Mr LIU Chee Ming
Mr MAGUIRE John Martin
Mr WEBB David Michael

A full list of members of the Panel, Appeal Committee, Disciplinary Chair Committee and Nominations Committee can be found in the "Regulatory functions – Listings & takeovers – Takeovers & Mergers – Takeovers Panel & related committees" section of the SFC website.

Quarterly update on the activities of the Takeovers Team

In the three months ended 31 December 2018, we received 15 takeovers-related cases (including privatisations, voluntary and mandatory general offers and off-market and general-offer share buy-backs), six whitewashes and 72 ruling applications.

Useful links

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

All issues of the *Takeovers Bulletin* are available under 'Published resources – Industry-related publications – Takeovers Bulletin' on the SFC website at www.sfc.hk.

Feedback and comments are welcome and can be sent to takeoversbulletin@sfc.hk.

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Appointed for a term from 20 October 2018 to 19 October 2020.