

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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Consultation conclusions on amendments to the Codes

We issued a consultation paper on 19 January 2018 proposing various amendments to the Takeovers Code and Share Buy-backs Code. The consultation period ended on 19 April 2018 and 26 submissions were received.

A conclusions paper issued on 13 July 2018 contains our responses to the public comments. The amended Codes were gazetted and became effective on the same day.

The amendments include the following:

- clarification that parties must provide the Executive, the Panel and the Takeovers Appeal Committee with all relevant information which they are aware of, and correct or update the information if it changes, to facilitate informed decision making (sections 5.2, 7.1, 11.18 and 14.9 to the Introduction to the Codes);
- clarification of the power of the Executive, the Panel and the Takeovers Appeal Committee to make a compliance ruling as a pre-emptive measure to prevent breaches and protect shareholders (sections 7.1, 7.2 and 13.12 to the Introduction);
- empowering the Panel to require compensation to be paid to provide redress to shareholders or former shareholders who have suffered financial loss as a result of a breach of certain provisions of the Codes (section 13.10 of the Introduction);
- raising the voting threshold for a whitewash waiver resolution under Note 1 on dispensations from Rule 26 of the Takeovers Code to not less than 75% of the disinterested shares;
- requiring appropriate measures to be put in place before a waiver from Rule 2.2(c) can be granted for the delisting of companies that are incorporated in jurisdictions with no compulsory acquisition right (Note to Rule 2.2 of the Takeovers Code);

Highlights

- Consultation conclusions on Codes amendments and related changes
- New note to section 4.2 of the Introduction
- Cold shoulder order imposed on Chan Shing for breach of mandatory offer requirement
- Quarterly update on the activities of the Takeovers Team

- changes to 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; and
- requiring disclosure of details and dealings in the relevant securities of a company (not being the offeror) that are being offered as consideration in an offer (Rules 3.8 and 22 of the Takeovers Code).

The consultation paper and the conclusions paper can be found in the “Regulatory function – Listing & takeovers – Takeovers & mergers – Consultations” section of the SFC website.

Hard copies of the revised Codes will be distributed to annual subscribers in due course. In the meantime, market participants and practitioners should use the soft version available on the SFC website.

Electronic dealing disclosure forms

In light of the changes to the definition of associate and related provisions to the Codes, the prescribed electronic dealing disclosure forms (both public and private dealing disclosure forms) have been revised. The revised forms should be used for submissions made from 13 July 2018 onwards and can be accessed from the SFC homepage (under Home > Forms) or the “Regulatory function – Listing & takeovers – Takeovers & mergers – Forms” section of the SFC website.

Parties to an offer and their respective associates (definition as amended) should submit dealing disclosures using the Rule 22 Dealing Disclosure Online Submission system which can be accessed via <https://www.sfc.hk/dealdisclosure/gateway/landing?locale=en>. The deadline for submitting dealing disclosures has been extended to 12.00 noon on the business day following the date of the transaction, or where the dealings have taken place in US time zones, 12.00 noon on the second business day following the date of the transaction.

Practice Notes

Practice Note 9 has been revised to reflect the new 12.00 noon deadline for submission of dealing disclosures by exempt entities and to clarify that dealing disclosures should be made to the Executive using the Rule 22 Dealing Disclosure Online Submission system (paragraphs 4.7 (EFMs) and 6.5 (EPTs)).

Practice Note 9 has also been amended to provide guidance on the further documentation and confirmations that would normally be required for an application for exempt status by an entity that is not wholly owned by the relevant financial group (new paragraph 8.2(c)).

A marked-up version and a clean version of the revised Practice Note 9 can be found in the “Regulatory function – Listing & takeovers – Takeovers & mergers – Practice notes” section of the SFC website.

Practice Note 18 has been withdrawn as it is no longer relevant following the amendments to Rule 31.3 of the Takeovers Code.

Offer period tables

As mentioned in the consultation conclusions paper, the offer period tables have now been expanded to include details of the relevant securities of the offeror or of any third party securities in a securities exchange offer.

The offer period tables can be accessed from the “Regulatory function – Listing & takeovers – Takeovers & mergers – Current offer period tables” section of the SFC website.

Codes amended to align with new listing regime

On 27 April 2018 the SFC announced that the Codes would be amended effective 30 April 2018 to bring them in line with the new listing regime for companies from emerging and innovative sectors.

The new listing regime provides a concessionary route to secondary listing for Grandfathered Greater China Issuers. These are qualifying companies with a centre of gravity in Greater China which were primary listed on the New York Stock Exchange LLC, Nasdaq Stock Market or the Main Market of the London Stock Exchange Group plc (and belonging to the UK Financial Conduct Authority's "Premium Listing" segment) on or before 15 December 2017.

The amendments provide that the Codes will not apply to these secondary-listed companies unless and until the bulk of trading has moved to Hong Kong and the company is treated as having a dual-primary listing in Hong Kong under the Listing Rules. This is set out in the new note to section 4.2 of the Introduction to the Codes as follows:

"A Grandfathered Greater China Issuer within the meaning of Rule 19C.01 of the Listing Rules with a secondary listing on the Stock Exchange will not normally be regarded as a public company in Hong Kong under this section 4.2. Where the bulk of trading in the shares of a Grandfathered Greater China Issuer migrates to Hong Kong such that it would be treated as having a dual-primary listing in Hong Kong pursuant to Rule 19C.13 of the Listing Rules, the Codes will apply to it."

Public censure and cold shoulder order imposed on Chan Shing for breach of mandatory offer requirement

On 7 June 2018, we publicly censured and imposed a 24-month cold shoulder order against Chan Shing for breaching the mandatory general offer obligation under Rule 26.1 of the Takeovers Code. Chan is being denied direct or indirect access to the Hong Kong securities market until 6 June 2020.

Chan is the chairman and managing director of Burwill Holdings Limited. He acquired additional shares on 28 April 2014 which increased his and his concert parties' aggregate shareholding in Burwill to 34.45% from a lowest collective percentage of 31.96%, triggering a mandatory general offer under Rule 26.1(d) of the Takeovers Code.

Chan's action deprived Burwill's shareholders of the right to receive a general offer. He has apologised for the breach and submitted that he was unaware that the acquisition might trigger a mandatory general offer obligation under the Takeovers Code. He has agreed to the disciplinary action against him.

Practitioners and parties who wish to take advantage of the securities markets in Hong Kong are reminded that they should conduct themselves in matters relating to takeovers, mergers and share buy-backs in accordance with the Takeovers Code. If they do not, they may find that the facilities of such markets are withheld by way of sanction in order to protect those who participate in them.

A copy of the Executive Statement dated 7 June 2018 can be found in the "Regulatory functions – Listings & takeovers – Takeovers & Mergers – Decisions & statements – Executive decisions and statements" section of the SFC website.

Quarterly update on the activities of the Takeovers Team

In the three months ended 31 March 2018, we received 11 takeovers-related cases (including privatisations, voluntary and mandatory general offers and off-market and general-offer share buy-backs), 6 whitewashes and 62 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.

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