SFC Issues Takeovers Bulletin No. 77

The latest Takeovers Bulletin provides guidance on limited partnerships, offer structure switches, convertible securities buy-backs and listed alternative asset funds

The Hong Kong Securities and Futures Commission's (**SFC**) Takeovers Bulletin issued in June 2026 sets out important guidance on the treatment of partners in limited partnerships under the Codes on Takeovers and Mergers and Share Buy-backs (**Codes**), switches between schemes of arrangement and contractual offers, the application of the Share Buy-backs Code to buy-backs of convertible securities, and a new Practice Note 28 on listed closed-ended alternative asset funds (**LAFs**). The Bulletin also includes an update on the activities of the Takeovers Team.

SFC Takeovers Code Acting in Concert Presumption: Partners in Limited Partnerships

The bulletin clarified that limited partners will not automatically be presumed to be acting in concert with one another or with a general partner under class (7) of the acting in concert presumption merely by virtue of their common interests in the same limited partnership.

General partners are presumed to be acting in concert with the limited partnership and any bid vehicle it establishes. However, a limited partner will generally only be presumed to be acting in concert with the limited partnership if they hold 20% or more of the economic interests or voting rights in the partnership, or are otherwise involved in making or approving the partnership's investment decisions.

This approach is based on the Executive's view that general partners of limited partnerships play a role analogous to that of company directors, whereas limited partners play a role more akin to that of company shareholders than that of partners in an unlimited partnership. The Executive also emphasised that concert party assessments are fact-specific. Persons falling outside the presumptions may still be regarded as concert parties and presumptions may be rebutted depending on the circumstances. Parties should consult the Executive if they wish to clarify the application of the concert party rules to their specific situation.

Switches between a Scheme of Arrangement and a Contractual Offer

General Principle 4 requires an offeror to announce an offer only after careful and responsible consideration. Under Rules 5 and 16.2 of the SFC's Takeovers Code, an offeror may not withdraw an offer after issuing a firm intention announcement without the Executive's consent and may only introduce new conditions where necessary and with the Executive's approval.

The Executive confirms that switching between a scheme of arrangement and a contractual offer during an offer period requires its consent because such a change effectively amounts to a withdrawal of an offer or the introduction of new conditions. In determining whether to grant its consent, the Executive will consider the views of the offeree's independent board committee and independent financial adviser as to the effects of the proposed switch, the stage of the offer process, the reasons for the proposed switch and the likely impact on the likelihood of the offer becoming or being declared unconditional.

The Executive is more likely to grant consent where the switch is expected to make the offer more likely to become unconditional and hence deliverable. Examples of switches that are likely to increase the offer's deliverability are a change from a scheme to a contractual offer with a 50% acceptance condition and a change from a contractual offer with a 90% acceptance condition (assuming that the other commercial terms remain substantially unchanged).

An offeror seeking the Executive's consent to switch the transaction structure does not need to have reserved this right in its offer announcement or offer document beforehand. However, once consent to switch structure is obtained, the offeror must announce details of the switch as soon as is reasonably practicable. This announcement should cover, among other things, any changes to the offer's terms and conditions, the amended timetable agreed with the Executive, and whether any irrevocable commitments or letters of intent secured by the offeror or its concert parties will still be valid after the switch. If a switch is proposed, the Executive should be consulted at the earliest possibility.

Compliance with Share Buy-backs Code for Buy-backs of Convertible Securities

The Bulletin reminds issuers that the Share Buy-backs Code applies to buy-backs of convertible securities, warrants and options in the same way as shares, unless an exemption or waiver applies. The Executive clarifies the meaning of Limb (2) of the "exempt share buy-back" definition in Revised Practice Note 16, which took effect on 1 July 2026. A buy-back will only be exempt where neither the buy-back nor its conditions require separate negotiation or are subject to a separate agreement with the holders. If an issuer initiates a buy-back off-market or by way of a general offer and holders have the discretion to decide whether to sell their holdings at the buy-back price offered by the issuer, the transaction does not fall within the exemption.

A clean and marked-up version of revised Practice Note 16 are available on the SFC's website in the "Regulatory functions – Corporates – Takeovers and mergers – Practice notes" section.

New Practice Note 28 on Listed Closed-ended Alternative Asset Funds (LAFs)

LAFs refer to closed-ended collective investment schemes investing mainly in private, illiquid assets, which are authorised by the SFC under section 104 of the Securities and Futures Ordinance and 8.11 of the Code on Unit Trusts and Mutual Funds and are listed on the Hong Kong Stock Exchange under Chapter 20 of the Main Board Listing Rules.

Practice Note 28 sets out how the Codes apply to LAFs: the approach largely follows the framework applied to REITs. All takeovers, mergers and share buy-backs affecting LAFs, whether structured in corporate or non-corporate form, must comply with the principles and rules of the Codes unless otherwise permitted by the SFC and the constitutive documents should contain provisions requiring compliance with applicable regulatory requirements.

Quarterly Update on Activities of the Takeovers Team

From January to March 2026, the Takeovers Team received 15 takeovers-related cases, two whitewash applications and 58 ruling applications.

This newsletter is for information purposes only

Its contents do not constitute legal advice and it should not be regarded as a substitute for detailed advice in individual cases. Transmission of this information is not intended to create and receipt does not constitute a lawyer-client relationship between Charltons and the user or browser. Charltons is not responsible for any third party content which can be accessed through the website.

If you do not wish to receive this newsletter please let us know by emailing us at **unsubscribe@charltonslaw.com**

CHARLTONS
易周律师行

Hong Kong Office

Dominion Centre 12th Floor
43-59 Queen's Road East Hong Kong

enquiries@charltonslaw.com

www.charltonslaw.com
Tel: + (852) 2905 7888
Fax: + (852) 2854 9596