Hong Kong Codes on Takeovers and Mergers and Share Buy-backs



Overview of the Hong Kong Codes on Takeovers and Mergers and Share Buy-backs

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CHARLTONS 易周律師行

12F Dominion Centre, 43-59 Queen's Road East, Hong Kong www.charltonsquantum.com

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Introduction

The Takeovers Code and Share Buy-backs Code, issued by the Securities and Futures Commission (SFC) of Hong Kong, aim to ensure fair treatment of shareholders during takeovers, mergers, and share buy-backs. The Codes are not legally binding but represent a consensus on acceptable commercial conduct in Hong Kong's financial markets. Compliance with the Codes is required by the Listing Rules, and noncompliance may result in market facilities being withheld alongside other disciplinary action. The Codes apply to directors, management companies, trustees of Real Estate Investment Trusts (REITs), persons seeking control of companies, their advisers, others involved in relevant transactions and persons engaged in the securities market. Financial and professional advisers play a crucial role in ensuring compliance with the Codes and they must have the necessary competence and resources to fulfill their responsibilities. The Codes focus on procedural fairness rather than the financial merits of transactions which are left to the discretion of the companies and their shareholders. The Codes generally apply to Hong Kong public companies as well as companies and REITs with a primary listing in Hong Kong, and may apply to others based on specific criteria. The Codes govern offers for and takeovers and mergers of relevant companies however they are effected. The Codes can be amended by the SFC in consultation with the Panel.

The Executive Director of the Corporate Finance Division of the SFC administers the Codes, investigates transactions, and provides rulings and guidance. Rulings by the Executive can be reviewed by the Panel, which is a committee of the SFC. The Panel consists of up to 40 members from the financial community and hears disciplinary matters and reviews Executive rulings. The procedures for consulting the Executive, applying for rulings, the hearing and the process for reviewing Executive decisions by the Panel are set out under the Introduction to the Codes. Disciplinary proceedings under the Codes can result in sanctions such as public statements, censure, or banning advisers from acting in certain capacities. The Takeovers Appeal Committee reviews disciplinary rulings to assess fairness or excessiveness of sanctions.

The SFC may share information with other regulatory authorities to maintain market integrity. The Introduction section also provide exemptions in certain financial institution recovery scenarios under the Financial Institutions (Resolution) Ordinance.

1. Nature and purpose of the Takeovers Code and Share Buy-backs Code

The Takeovers Code and Share Buy-backs Code (Codes) is issued by the Hong Kong Securities and Futures Commission (SFC) in consultation with the Takeovers and Mergers Panel (Panel). (1.1)

The primary purpose of these Codes is to ensure fair treatment for shareholders affected by takeovers, mergers, and share buy-backs. The Codes aim to achieve fairness by requiring equal treatment of shareholders, mandating timely and adequate information disclosure, and ensuring a fair and informed market. The Codes provide an orderly framework for conducting takeovers, mergers, and share buy-backs. (1.2)

The Codes do not have legal force, are written in non-technical language, and represents a consensus of acceptable commercial conduct standards in Hong Kong's financial markets. (1.3)

Non-compliance with the Codes may result in sanctions, such as withholding market facilities to protect market participants. The Listing Rules also require compliance with the Codes. (1.4)

Responsibilities under the Codes apply to directors of companies which are subject to the Codes, management companies, their directors and trustees of Real Estate Investment Trusts (REITs), persons or groups seeking control of companies subject to the Codes, their professional advisers, participants in relevant transactions, and active securities market participants. (1.5)

Individuals issuing circulars or advertisements related to takeovers, mergers, or share buy-backs must adhere to high standards and consult with the Executive before distribution. (1.6)

Financial and professional advisers play a crucial role due to the non-statutory nature of the Codes. They must ensure clients understand and comply with the Codes and cooperate with inquiries from the Executive, the Panel, or the Takeovers Appeal Committee. Advisers must possess the necessary competence, expertise, and resources to fulfill their responsibilities pursuant to the Codes. Adequate resources for financial advisers include assigning experienced staff and ensuring proper supervision by a responsible officer or an experienced senior staff member. If uncertain about meeting these requirements, they should consult the Executive in advance. The Executive can disallow advisers from acting if they fail to meet standards, with the option for advisers to request a Panel review. Financial advisers should also be aware of conflicts of interest, as outlined in Schedule VII of the Codes. (1.7)

The Codes do not address the financial or commercial merits of transactions, which are the concern of the company and its shareholders. (1.8)

Companies considering transactions should be aware of relevant company law requirements. (1.9)

2. General Principles and Rules

The definitions and the General Principles are applicable to both Codes. The General Principles are broad conduct standards. The Executive and the Panel may apply the General Principles flexibly to achieve their intended purposes. The specific Rules generally

expand on these principles or govern specific procedures. The Rules within the Codes are detailed but may be interpreted to achieve their underlying purposes, similar to the General Principles. The spirit of the Rules must be observed, and the Executive and the Panel may modify or relax a Rule if its strict application is unnecessarily restrictive or inappropriate. (2.1)

Notes are included in the Codes to offer guidance on how the Executive and the Panel typically interpret the Codes. (2.2)

The Executive and the Panel will consider previous rulings under the Codes or by their predecessor, the Committee on Takeovers and Mergers, when interpreting the Codes. (2.3)

3. Amendment of the Codes

The Codes can be amended or extended by the SFC in consultation with the Panel. (3.1)

4. Companies and transactions to which the Codes apply

The Codes apply to takeovers, mergers, and share buy-backs involving public companies in Hong Kong, companies with a primary listing in Hong Kong, and Real Estate Investment Trusts (REITs) with a primary listing in Hong Kong. The Codes may also apply to REITs listed in Hong Kong other than by primary listing, depending on the specific circumstances. The nature of the offeree company or the company in which control may change is generally relevant, the treatment of the offeror's shareholders may be required to be considered under the circumstances set out under Rule 2 of the Takeovers Code. The Executive typically grants waivers from the Share Buy-backs Code for companies with a primary listing outside Hong Kong if Hong Kong shareholders are adequately protected. (4.1)

To determine if a company is a public company in Hong Kong, the Executive will apply an economic or commercial test and consider factors such as the number of Hong Kong shareholders, share trading extent in Hong Kong, head office and central management location, business and asset location, company registration and tax status, and protection available to Hong Kong shareholders under foreign statutes or codes. Companies uncertain about their status as a public company in Hong Kong should consult the Executive early. A Grandfathered Greater China Issuer with a secondary listing on The Stock Exchange of Hong Kong Limited (HKEX) is generally not considered a public company in Hong Kong unless its trading migrates to Hong Kong, leading to a dual-primary listing. (4.2)

The Takeovers Code applies to offers, takeovers, and mergers of relevant companies, including partial offers, parent company offers for subsidiary shares, and transactions to obtain or consolidate control. However, it excludes non-voting, non-equity capital offers unless specified by certain rules. (4.3)

The Share Buy-backs Code covers share buy-backs of relevant companies, with share buy-backs by way of general offer treated as offers under the Takeovers Code. (4.4)

Transactions under the Codes may fall under both the Panel and an overseas regulator's jurisdiction, necessitating early consultation with the Executive to resolve jurisdictional conflicts. (4.5)

5. The Executive

The Executive administers the Codes, investigates takeovers, mergers, and share buy-backs, and monitors relevant dealings. It provides consultation and rulings on matters related to the Codes. (5.1)

Persons dealing with the Executive must be open and cooperative, and provide true, accurate, and complete information. They must update or correct information if it changes or if inaccuracies are discovered even after the Executive has made a determination. Parties must promptly notify the Executive of any new information relevant to a determination that has a continuing effect, such as granting an exempt status or a concert party ruling. The application of General Principle 10 is not limited by this section. (5.2)

6. Consulting the Executive

Parties or their advisers should consult the Executive in advance if there is any doubt about compliance with the General Principles or Rules to avoid breaching the Codes. (6.1)

Consultations with the Executive are free, typically verbal, and do not result in formal rulings. The Executive's views during consultations are preliminary and non-binding on the Executive. (6.2)

The Executive does not answer hypothetical questions or provide provisional rulings for example when the interested parties cannot be identified. (6.3)

Consultations do not lead to provisional rulings, and formal rulings can be sought subsequent to a consultation with payment of a fee. If there is a disagreement during consultations, parties are encouraged to seek a formal ruling. (6.4)

7. Rulings by the Executive

The Executive may issue rulings on its own or upon request from an interested party, involving a thorough analysis of all relevant information. Rulings may require informal meetings or input from other interested parties and necessitate prompt cooperation from those to whom enquiries are made with. Initial rulings may be communicated orally but will be confirmed in writing. (7.1)

Compliance rulings are issued if the Executive believes there is a reasonable likelihood of or an actual contravention of the Codes. The SFC may issue directions to restrain individuals from breaching the Codes, from doing particular acts pending determination of whether the Codes have been breached or to ensure compliance with the Codes. (7.2)

8. Applications for rulings

Applications for rulings under the Codes must be submitted in writing to the Executive Director of the Corporate Finance Division of the SFC. Submissions should be electronic unless otherwise directed and must include comprehensive information for an informed decision. The application should clearly describe the following:

- (a) Summary ruling sought, alternative actions, and relevant Code sections;
- (b) Parties all parties with a material interest, including their financial and legal advisers, must be identified;
- (c) Material Facts material facts must be detailed, including:
 - the proposed transaction's description, timetable, regulatory requirements, and commercial rationale;
 - ii. (where known) information about the offeror and offeree company, including incorporation details, capital and group structures, businesses, assets, and shareholder identities, should be provided. A structural chart showing the offeror and offeree company structures and shareholder interests before and after the transaction is required
 - iii. a historical chronology of related events;
 - iv. the interests of controlling shareholders in the offeror, offeree company the proposed transaction
 - v. the interests of the offeror's and offeree's directors in the proposed transaction;
 - vi. the impact of the proposed transaction on both the offeror and the offeree company
 - vii. steps to protect independent shareholders' interests;
 - viii. description of the financing arrangements for the proposed transaction;
 - ix. (where known) information on any securities dealings by the offeror, directors, substantial shareholders, and associated persons within 6 months prior to the application; and
 - x. information on the terms and conditions of material contracts.
- (d) Issues for consideration description and analysis of key questions or concerns for the Executive to address and relevant arguments. (8.1)

A crossed cheque for the application fee, as per the Securities and Futures (Fees) Rules, should be submitted, including a fee calculation description. (8.2)

Applications must include a completed filing form from the SFC's website, certifying the truth, accuracy, and completeness of the information in the application. Advisers filing on

behalf of applicants must ensure compliance with the Codes and certify the submission's accuracy and that authorisation so submit the filing has been obtained. (8.3)

9. Review of Executive rulings

Parties contesting an Executive ruling can request a review by the Panel, which will be convened promptly taking into account the transaction's timetable. The Executive and the parties must submit succinct statements of their cases before the meeting, which are shared with the Executive and the party involved. The Panel has the discretion to review requests from aggrieved shareholders if deemed non-frivolous. The Executive can set a deadline for review requests in urgent cases; otherwise, review requests must be made within 14 days of the event prompting the review. Review requests must include the grounds for the review. (9.1)

10. Executive referrals to the Panel

The Executive may refer matters to the Panel without a prior ruling if the issue is novel, important, or difficult. (10.1)

11. The Panel

The Panel, established under section 8(1) of the Securities and Futures Ordinance (SFO), handles disciplinary matters, reviews Executive rulings, and considers novel, important or complex cases referred by the Executive. The Panel also reviews and suggests amendments to the Codes and Rules of Procedure upon SFC's request. (11.1 & 11.2)

The Panel comprises up to 40 members (excluding the Disciplinary Chair Committee) from the financial and investment community, one of which must be a non-executive director of the SFC. Members generally serve 2-year terms and may be reappointed. Discussions regarding proposals to review or amend the Codes shall involve the Executive Directors and staff of the SFC. (11.3)

The Panel has a Chairman and at least one Deputy Chairmen who shall chair the meeting (where neither is available, other member can be appointed as chair), with the meeting chair having both deliberative and casting votes. (11.4)

Panel members must adhere to Conflicts of Interest Guidelines. (11.5)

Members are remunerated at rates set by the SFC. (11.6)

The Panel does not have the authority to award costs. (11.7)

The quorum for hearings before the Panel is 5 members, including the Chairman. If a member who is not the Chairman is absent, the hearing can proceed with 4 members with the parties' consent. The Chairman has a casting vote in case of a tie. (11.8)

The Chairman and another Panel member can co-opt a qualified person to join the Panel, with the approval from the Chief Executive Officer of the SFC , and this person counts towards the quorum. (11.9)

The Disciplinary Chair Committee, established under section 8(1) of the SFO, consists of up to 8 experienced and legally qualified individuals who can act as Chairman for the Panel in disciplinary proceedings and the Takeovers Appeal Committee under certain cases. (11.10)

Members of the Disciplinary Chair Committee are remunerated at rates set by the SFC. (11.11)

If no Disciplinary Chair Committee member is available, 2 or more of its members can coopt a qualified person to act as Chairman, with the SFC Chief Executive Officer's approval. (11.12)

The Panel is supported by a Secretary, typically an SFC staff member, responsible for administrative arrangements and secretarial duties as directed by the Chairman of the Panel or the Takeovers Appeal Committee. (11.13)

A Legal Adviser, not usually an SFC staff member, may be appointed by the Chairman of the Panel to assist with legal questions and ensure no legal mistakes occur. The Legal Adviser must not have been involved in the matter and must disclose any conflict of interest concerns. (11.4)

The Legal Adviser's role is to provide assistance and advice to the Panel or its Chairman on legal or mixed legal and factual matters. They are also responsible for identifying and informing the Panel of any irregularities in proceedings and offering advice to prevent potential legal errors. (11.5)

The Legal Adviser to the Panel is not a party or witness in the proceedings and cannot be questioned by the parties involved. However, parties can address the Panel regarding the Legal Adviser's opinions. (11.16)

The Legal Adviser's advice on legal issues or mixed fact and law that may affect the Panel's decision will be disclosed to the parties for comment before a decision is made. Advice on procedural matters does not need to be disclosed to respondents. (11.17)

Obligations outlined in section 5.2 apply to anyone dealing with the Panel. (11.8)

12. Disciplinary proceedings

The Executive can initiate disciplinary proceedings before the Panel for breaches of the Codes or rulings by the Executive. (12.1)

If a breach is found, the Panel may impose sanctions such as public reprimand, public censure, restrictions on persons or corporations licensed or registered with the SFC from acting in certain capacities, banning advisers from appearing before the Executive or Panel, or other actions deemed necessary. The Executive or Panel may report individuals to other

regulatory authorities or professional bodies if there is reasonable belief of a contravention of the rules, regulations and standards of these authorities, even without a breach finding. (12.2)

The Executive can handle a disciplinary matter if the party agrees to the proposed disciplinary action. (12.3)

Non-compliance with the Codes, a ruling, or a requirement (such as not acting for a named person under section 12.2(c)) by persons or corporations licensed or registered with the SFC or relevant individual constitutes a breach of the Codes. This breach may trigger disciplinary proceedings under section 12 and could result in the suspension or revocation of the entity's or individual's licence or registration. (12.4)

13. Hearings

The Conflicts of Interest Guidelines is applicable to the Panel and the Takeovers Appeal Committee, under which, members with potential conflicts of interest cannot participate in the relevant hearings. (13.1)

Non-disciplinary hearings under sections 9.1 and 10.1 are informal and private due to the involvement of confidential, price-sensitive information. (13.2)

Disciplinary hearings under section 12.1 are informal and public for transparency, except in cases where the Panel or the Chairman determines that hearing the case in private is required to protect commercial confidentiality for example price sensitive information. (13.3)

Parties are generally entitled to be present and access all submitted papers, but confidential evidence may be presented privately if justified. The parties involved must not be present during the Panel's deliberations on the case. (13.4)

Attendees of private hearings must not disclose details to the public or use information outside the hearing context. Similar restrictions apply to private sections of public hearings. (13.5)

Hearings are typically presented by parties or their financial advisers. While parties can opt to be represented by legal advisers, this is uncommon in non-disciplinary hearings. (13.6)

There are no formal rules of evidence, and the Panel directs its own proceedings, making relevant enquiries as needed. (13.7 & 13.8)

Hearings follow the Panel's Rules of Procedure, which are issued by the SFC periodically and are available on the SFC's website. (13.9)

The Chairman of a hearing can issue preliminary or procedural directions, including compliance rulings under section 7.2 of the Introduction, without a hearing. These rulings by the Chairman are considered rulings of the Panel. (13.10)

In disciplinary hearings, the Chairman can decide legal questions and questions of mixed fact and law, and consult with other Panel members if necessary. In non-disciplinary hearings, these questions are decided collectively by the Panel. (13.11)

The Panel can issue directions similar to those described in section 7.2 of the Introduction. (13.12)

If a person breaches of Rules 13, 14, 16, 23, 24, 25, 26, 28, 30 or 31.3 of the Takeovers Code, the Panel can require them to pay an amount deemed just and reasonable with applicable interest to affected security holders within a time limit, regardless of other sanctions. (13.13)

14. The Takeovers Appeal Committee

The Takeovers Appeal Committee, established under the SFO, reviews the Panel's disciplinary rulings to assess if the sanctions are unfair or excessive based on the Panel's fact-finding results. (14.1 & 14.2)

The Takeovers Appeal Committee includes a Chairman from the Disciplinary Chair Committee and other Panel members selected for each case, excluding those involved in the original disciplinary proceedings. (14.3)

Members of the Takeovers Appeal Committee are remunerated at rates set by the SFC. (14.4)

Appeals must be submitted in writing within 5 business days of the ruling, detailing the grounds and reasons for the appeal. (14.5)

A quorum for the Committee's hearings is 3 members, including the Chairman. If a member other than the Chairman is absent, the hearing can continue with consent. The Takeovers Appeal Committee can proceed with a quorum of 2 members, with the Chairman having a casting vote in case of a tie. (14.6)

The Chairman and the other Panel member may co-opt a qualified person to join the Committee, subject to the SFC Chief Executive Officer's approval, and this person counts towards the quorum. (14.7)

The Committee is supported by a Secretary, typically an SFC staff member not previously involved in the same matter. The obligations under section 5.2 of this Introduction will apply to parties involved. (14.8 & 14.9)

15. Hearing of the Takeovers Appeal Committee

Members must adhere to the Conflicts of Interest Guidelines. (15.1)

Hearings are informal and public for transparency, except in cases requiring confidentiality as determined by the Takeovers Appeal Committee or the Chairman, such where pricesensitive information is involved. (15.2)

Similar to those of the Panel, hearings follow the Committee's Rules of Procedure, which are issued by the SFC periodically and are available on the SFC's website. (15.3)

16. Publication of rulings

The Committee and Panel shall publish their rulings and reasons on the SFC's website promptly including when pending an appeal to the Takeovers Appeal Committee, unless confidentiality or price sensitivity necessitates a delay as determined by the Panel or the Takeovers Appeal Committee. (16.1)

In private hearings, parties must not announce rulings before the official public announcement and may only comment using the language in the public announcement. (16.2)

The Executive follows a policy of transparency by publicly announcing its proceedings under section 12.1, along with key rulings and Code interpretations, unless restricted by commercial confidentiality (e.g., price-sensitive information). These disclosures help the public understand its actions. The Executive may also issue rulings in specific cases with broader relevance, or publish policy statements, such as Practice Notes, to clarify its application and interpretation of the Codes in greater detail. (16.3)

17. Co-operation with other authorities

Information provided to the Executive, the Panel, or the Takeovers Appeal Committee is treated with strict confidentiality, aligning with the SFC's obligations under the SFO. Subject to these obligations, the SFC may share information with other regulatory authorities to help them fulfill their duties, and it may also receive relevant information from these bodies. (17.1)

18. Review by SFC

The SFC generally does not review or involve itself in the rulings of the Panel or the Takeovers Appeal Committee. (18.1)

19. Financial institution recovery and resolution

Under section 153(7) of the Financial Institutions (Resolution) Ordinance (Cap. 628), obligations under the Codes are exempted for persons in relation to a listed entity where it or its group company is undergoing a bail-in stabilisation option as defined in the Ordinance. (19.1)

Definitions

The "definition" section provides a comprehensive set of definitions and guidelines on terms frequently referenced under the Codes. One of the key definitions is the definition of "acting in concert" which sets out the presumptions and criteria for determining when individuals or entities are considered to be acting in concert to gain control of a company through acquisition of voting rights. A summary of the key definitions are as follows:

"Acquisition of voting rights" is defined as the exercise of control or direction over voting rights, excluding revocable proxies given for nominal consideration for one shareholder meeting only.

"Acting in concert" refers to individuals or entities that cooperate, through formal or informal agreements or understandings, to gain or consolidate control of a company by acquiring voting rights.

Certain classes of entities and individuals are presumed to be acting in concert unless proven otherwise:

- (1) a company and its parent, subsidiaries, fellow subsidiaries, associated companies, and companies associated with these entities;
- (2) a company and its directors, including their close relatives, related trusts, and companies controlled by them, as well as directors of the parent company;
- (3) a company and its pension funds, provident funds, and employee share schemes, with an exception for employee benefit trusts;
- (4) a fund manager (including an exempt fund manager) and any investment company, mutual fund, unit trust, or other person whose investments the manager controls on a discretionary basis;
- (5) a financial or professional adviser (including a stockbroker) and its client concerning the adviser's shareholdings and shareholdings of persons and persons controlling, controlled by or under the same control as the adviser, excluding when as an exempt principal traders or fund managers;
- **(6)** directors of a company (together with their close relatives, related trusts and companies controlled by such directors, their close relatives and related trusts) subject to an offer or anticipating a bona fide offer;
- (7) partners;
- (8) an individual and their close relatives, related trusts, and companies they control, including those acting on their instructions;

(9) a person, excluding authorised institutions under the Banking Ordinance, who provides finance or financial assistance for acquiring voting rights is considered in the context of "acting in concert."

Notes to the definition of acting in concert:

Clarifies that if an individual owns or controls 20% or more of a class (1) company's voting rights, they and others in within class (8) above are presumed to be acting in concert unless proven otherwise. (Note 1)

Full disclosure of relevant information is required when investigating if parties are acting in concert, with potential disciplinary actions for non-compliance. (Note 2)

Clear evidence is needed to prove that a group previously ruled or admitted to be acting in concert is no longer doing so. (Note 3)

Investors in a consortium are typically treated as acting in concert with the offeror, and consultation with the Executive is advised for larger organisations. (Note 4)

Giving irrevocable undertakings or warranties to an offeror does not automatically presume the shareholder is acting in concert with the offeror. (Note 5)

Standstill agreements, which may restrict shareholders or directors from making or accepting offers for company shares or altering shareholdings, may be relevant in determining whether the parties are acting in concert with each other. (Note 6)

Under class (6), an offer includes transactions subject to a whitewash application. (Note 7)

The relationship between an underwriter (or sub-underwriter) of a cash alternative and an offeror may be relevant in determining whether they are "acting in concert." Standard underwriting agreements on commercial, arm's-length terms typically do not constitute such an arrangement. However, certain features such as liability allocation, commission structures, or the underwriter's involvement in the offer, may lead the Executive to conclude that an understanding exists, bringing them within the definition of "acting in concert." Doubtful cases should be referred to the Executive. Additionally, where a purchaser acquires only part of a holding (e.g., to stay below the 30% threshold and avoid a mandatory bid), the Executive will scrutinise any underwriting arrangements by the seller to ensure they do not create an understanding with the purchaser which would amount to be acting in concert. (Note 9)

Transfers of voting rights as gifts or for nominal consideration presume the transferor and transferee are acting in concert under class (9), with exceptions for certain charitable bodies. (Note 10)

Associate of the offeror or potential offeror or the offeree company includes

(1) any person acting in concert with them;

- (2) financial and professional advisers of their parent, their subsidiaries and other of their fellow subsidiaries, including persons controlling, controlled by or under the same control as such financial and other professional advisers, excluding certain exempt fund managers and traders under (5) below;
- (3) directors, along with their close relatives, related trusts, and companies controlled by them, of any of their subsidiary or fellow subsidiary;
- **(4)** pension funds, provident funds, and employee share schemes of their parent, subsidiaries, and fellow subsidiaries;
- (5) exempt principal traders or exempt fund managers controlling, controlled by, or under the same control as their financial adviser (including stockbrokers) and the financial advisers of their parent, subsidiaries and fellow subsidiaries; and
- (6) A person owning or controlling 5% or more of any class of relevant securities issued by them. If 2 or more parties act under an agreement (formal or informal) to acquire or control such securities, they will be treated as a single person for this purpose. Additionally, securities managed on a discretionary basis by an investment management group will generally be aggregated as held by a single person, unless the Executive agrees otherwise.

Associated company is defined as one owning or controlling 20% or more of the voting rights of another company or both being associated with the same company.

Business day is defined as a day when the Stock Exchange is open for business.

Cash purchases include contracts or arrangements with a debt instrument capable of being paid off in less than 3 years as the consideration.

Close relatives include a person's spouse, de facto spouse, parents, children (including a person's natural child, adopted child and step-child), grandparents, grandchildren, siblings (and their spouses, de facto spouse and their children) as well as the parents and siblings of the person's spouse or de facto spouse.

Codes refers to the Takeovers Code and the Share Buy-backs Code.

Connected fund manager or **connected principal trader** is a fund manager or principal trader that controls, controlled by, or under the same control as an offeror, offeree company, financial or other professional adviser to the offeror or offeree company, or an investor in a consortium formed to make the offer.

Control is defined as holding or aggregate holdings of 30% or more of a company's voting rights, regardless of de facto control.

Convertible securities are generally securities that can be converted or exchanged into new or existing shares of a company.

Derivative refers to any financial product whose value is determined by the price of an underlying security, without including the delivery of that security

Notes to the definition of derivative

Derivative is broad, but the Codes do not intend to restrict or require disclosure of derivatives not connected to an offer. Derivatives linked to a basket or index are not considered connected if relevant securities are less than 1% of the class and 20% of the value of the securities in the basket or index. The Executive should be consulted when in doubt.

Directors include individuals whose instructions the directors or a director typically follow

Document encompasses any announcement, advertisement, or document related to an offer or possible offer, excluding those for inspection under specific rules of the Takeovers Code. It includes documents from offerors, the offeree company, their shareholders, and those acting in concert with them.

Documents also cover announcements, advertisements or documents in relation to transactions where a ruling is sought to the effect that there is no offer obligation, a transaction that is conditional on no such obligation arising or conditional upon obtaining such ruling.

Employee share buy-back refers to a share buy-back conducted by an offeror from its current or former employees, or those of a subsidiary, under an employee share option scheme approved by shareholders in a general meeting.

Executive refers to the Executive Director of the Corporate Finance Division of the Securities and Futures Commission (SFC) or their delegate.

Exempt fund manager is a person managing investment accounts on a discretionary basis, recognised by the Executive as exempt for the purposes of the Codes.

Exempt principal trader is a person trading as a principal in securities for derivative arbitrage or hedging activities for example closing out existing derivatives, delta hedging in respect of existing derivatives, index related product or tracker fund arbitrage in relation to the relevant securities or other similar activities, recognised by the Executive as exempt during an offer period. They are not subject to Rule 21.7 if the exempt principal trader conducts securities borrowing and lending in the ordinary course of business.

Notes to the definitions of exempt fund manager and exempt principal trader:

Discretionary investment managers and principal traders may apply to the Executive for exempt status, subject to compliance with specific conditions. Applicants for exempt principal trader status must disclose their current/proposed principal trading activities in securities and other instruments. This is an ongoing obligation, particularly during offer periods.

Exempt status remains valid for principal traders or fund managers connected to an offeror orofferee company only if the sole connection is through shared control with a financial/professional adviser (e.g., a stockbroker) to the offeror or offeree. All Code references to exempt principal traders or exempt fund managers should be interpreted this way (see Rule 21.6 for discretionary fund manager provisions).

Exempt share buy-back includes categories such as:

- (1) employee share buy-backs;
- (2) a share buy-back in accordance with the terms and conditions attached to the shares, allowing or requiring buy-back without prior agreement from the owners of the shares;
- (3) a share buy-back at the request of the share owners, as per the terms and conditions granting them the right to demand a buy-back; and
- (4) a share buy-back as required by the law of the jurisdiction where the offeror is incorporated or established.

Licensed corporation and licensed representative are defined as per Part 1 to Schedule 1 of the Securities and Futures Ordinance (Cap. 571).

Listing Rules refer to the Rules Governing the Listing of Securities on the Stock Exchange.

Offer includes takeover and merger transactions, schemes of arrangement having similar commercial effect as partial offers, and offers by a parent company for shares in its subsidiary, as well as share buy-backs by general offer.

A note on the definition of "offer" states that a voluntary offer should not be made at a price substantially below the market price. Voluntary offers at more than a 50% discount to the lesser of the closing price on the trading day before the Rule 3.5 announcement and the 5-day average closing price are considered substantially below market price. Waivers are granted by the Executive only in exceptional circumstances, and consultation with the Executive is required.

Offeror includes companies and individuals, and in the context of share buy-backs, refers to a company engaged in or considering a buy-back of its own shares.

Offer period is defined as the time from the announcement of a proposed or possible offer until the latest of the following:

- (1) the offer closes for acceptances;
- (2) the offer lapses;
- (3) a possible offeror announces that the offer will not proceed;
- (4) the date of an announcement withdrawing a proposed offer; and
- (5) the latest date for electing alternative forms of consideration (if applicable), or

an earlier date determined by the Executive based on relevant circumstances.

Notes to the definition of offer period:

In a scheme of arrangement, an offer is unconditional when the scheme is effective. The offer period refers to the time the offeree company is in an offer period, regardless of the offeror's or potential offer's intentions of making an offer. Multiple offers do not affect each other's offer periods.

Off-market share buy-back refers to a buy-back not conducted by general offer, an exempt share buy-back or an on-market share buy-back.

On-market share buy-back refers to a buy-back made through the Stock Exchange's automatic order matching system or that of a recognised exchange and made in accordance with respective rules. The company and directors must not directly or indirectly involved in the solicitation, selection or identification of the sellers.

Options refers to options to subscribe or purchase new or existing shares.

Panel refers to the Takeovers and Mergers Panel.

Person can be an individual or a company.

Privatisation refers to an offer for a company by a controlling shareholder or persons acting with them, excluding partial offers.

Public company in Hong Kong refers to company subject to the Codes under sections 4.1 or 4.2 of the Introduction to the Codes.

Recognised exchange refers to an exchange acknowledged by the Executive and the Stock Exchange, with share buy-back rules comparable to the Listing Rules.

Registered institution is defined as per Part 1 to Schedule 1 of the Securities and Futures Ordinance (Cap. 571).

Relevant individual is defined in section 20(10) of the Banking Ordinance (Cap. 155).

Rights over shares include rights acquired under agreements to purchase, options to acquire shares, options, warrants, convertible securities, voting rights, or irrevocable commitments to accept an offer.

Ruling encompasses any written ruling, waiver, consent, decision, confirmation, or determination under the Codes by the Executive, the Panel, or the Takeovers Appeal Committee.

Securities exchange offer involves consideration that includes securities of the offeror or another company.

SFC stands for the Securities and Futures Commission.

Share buy-back involves the buy-back, redemption, or acquisition of shares of the offeror by an offeror, including privatisation, schemes of arrangement, or reorganisations.

Share buy-back by general offer is a buy-back by an offer to all holders of a class of shares of the offeror.

Share Buy-backs Code refers to the Code on Share Buy-backs.

Shares under the Share Buy-backs Code include all classes of shares and securities with rights to subscribe or purchase shares issued by a company or its subsidiaries.

Stock Exchange refers to The Stock Exchange of Hong Kong Limited.

Subsidiary is defined by the Companies Ordinance (Cap. 622) and includes entities consolidated in financial statements.

Substantial shareholder is a person holding 10% or more of a company's voting rights.

Takeovers Code refers to the Code on Takeovers and Mergers.

Voting rights are all rights exercisable at a company's general meeting, regardless of share capital attribution.

Note to the definition of voting rights:

Voting rights, even if restricted by agreement, law, regulations, or court order, are considered exercisable at a general meeting, except for those attached to treasury shares.

Warrants are defined as rights to subscribe or purchase new or existing shares in a company, unless context dictates otherwise.

Notes to Definitions:

- 1. Control is generally defined as holding 30% or more of a company's voting rights. In uncertain cases, consultation with the Executive is advised.
- 2. References to "banks" exclude those providing only normal commercial banking services or activities such as confirming cash availability or handling acceptances and other registration work related to an offer.
 - References to "financial and other professional advisers (including a stockbroker)" exclude organisations that have stepped down from acting for a party in the offer due to conflicts of interest unless they continue to be involved with the party during the offer period, in which case the Executive must be consulted. The above exclusion will generally apply only if the Executive is satisfied that the involvement is wholly unconnected with the offer
- **3.** If a period specified by the Codes ends on a non-business day, it is extended to the next business day.



General Principles

The General Principles sets out the spirit of the Codes which must be observed when conducting offers, including share buy-backs by general offer even in situations not explicitly covered by any Rule. Directors and advisers of both the offeror and offeree companies have a duty to act in the best interests of their shareholders, but are subject to the limitations imposed by the Codes. Directors are responsible for ensuring compliance with the Codes during relevant transactions.

One of the key principles is that all shareholders should be treated equally, and a general offer is typically required if control of a company changes. Information must be shared equally among all shareholders, except when shared in confidence with a bona fide potential offeror. Offers should be announced only after careful consideration, ensuring the ability to implement them fully. Shareholders must receive sufficient information, advice, and time to make informed decisions, with all documents prepared with care and accuracy. Full and prompt disclosure of relevant information is crucial to avoid misleading shareholders or the market.

Control rights should be exercised in good faith, avoiding oppression of minority shareholders. Directors must act solely in their capacity as directors, avoiding conflicts of interest and considering shareholders' interests as a whole. The board of the offeree company must not take actions that could frustrate a bona fide offer without shareholder approval. All parties involved in transactions subject to the Codes must cooperate fully with the Executive, the Panel, and the Takeovers Appeal Committee.

1. Introduction

The SFC outlines that it is impractical to create detailed rules for every situation in offers, therefore, the spirit and letter of the General Principles and Rules must be observed, even in areas not explicitly covered by any Rule.

Boards of offeror and offeree companies, along with their advisers, must act in the best interests of their shareholders, but must also recognise the limitations imposed by the Codes on their actions during the transactions that are subject to the Codes. Directors of both offeror and offeree companies are responsible for ensuring compliance with the Codes in relevant transactions.

2. General Principles

- (1) Equal treatment for all shareholders, with similar treatment for shareholders of the same class.
- (2) A general offer to all shareholders is typically required if control of a company changes, is acquired, or consolidated. The acquiring party must ensure they can implement such an offer.

- (3) During an offer, or when one is contemplated, information must be equally available to all shareholders, except when shared in confidence with a bona fide potential offeror.
- **(4)** Offers should be announced only after careful consideration, the offeror and its financial advisors should be satisfied that the offeror can implement the offer fully.
- (5) Shareholders must receive sufficient information, advice, and time to make informed decisions, with all documents prepared with the highest standard of care, responsibility, and accuracy.
- **(6)** The SFC emphasises the necessity for full and prompt disclosure of all relevant information by all parties involved in offers to prevent the creation or continuation of a false market. Misleading statements to shareholders or the market must be avoided.
- (7) Control rights should be exercised in good faith, and the oppression of minority or non-controlling shareholders is deemed unacceptable.
- (8) Directors of both the offeror and offeree companies must act solely in their capacity as directors when advising shareholders, disregarding personal or familial shareholdings or relationships. They should prioritise the collective interests of shareholders. Directors of the offeree company should carefully consider any commitments with an offeror or others that might limit their ability to advise shareholders, such commitments may lead to conflicts of interest or breaches of fiduciary duties.
- (9) Once a bona fide offer is communicated or anticipated, the board of the offeree company must not take any action that could frustrate the offer or deny shareholders the opportunity to evaluate the offer without shareholder approval in a general meeting.
- (10) All parties involved in transactions subject to the Codes are required to fully cooperate with the Executive, the Panel, and the Takeovers Appeal Committee and to provide all relevant information.

Code on Takeovers and Mergers

For the section below, unless specified otherwise, references to a Rule is reference to a Rule under the Takeovers Code.

Rule 1 -Approach

Summary on the key points:

Rule 1 focuses on the initial approach of an offer and confidentiality requirements in the context of a takeover offer. It mandates that any offer should first be presented to the board of the offeree company or its advisers before public announcement. If the offer is not made directly by the ultimate offeror, the identity of the intermediary and its ultimate controlling shareholder or parent company must be disclosed to the offeree's board. The board has the right to take steps to verify that the offeror can fully implement the offer. Confidentiality is crucial, and all parties with access to sensitive information must maintain secrecy to prevent leaks. Financial and legal advisers are responsible for ensuring that their clients and associates understand the importance of confidentiality and adhere to the Takeovers Code, particularly Rule 1.4 and other restrictions on dealings.

1.1 Offer to the board

The offer must initially be presented to the board of the offeree company or its advisers before any public announcement is made.

1.2 Identity of offeror

If the offer is not made by the ultimate offeror or potential offeror, the identity of the person making the approach must be disclosed to the board of the offeree company at the outset. When the person making the approach is a company, the identity of its ultimate controlling shareholder and ultimate parent company must be disclosed. If there is a listed company in the chain, the identity of that listed company must also be disclosed.

1.3 Implementation of offer

The board approached is entitled to assurance that the offeror can or will be able to implement the offer in full.

1.4 Confidentiality

Confidentiality is crucial, and all parties with access to confidential or price-sensitive information must treat it as secret and take steps to reduce the risk of the information being leaked. Information should only be shared if necessary and if the recipient understands the need for secrecy.

Note to Rule 1.4:

Warning clients and others

Financial and legal advisers must ensure that their clients and others involved in the transaction understand the importance of maintaining secrecy and security, with specific attention to the Takeovers Code, specifically, this Rule 1.4 and dealing restrictions.

Rule 2 – Independent advice, independent committees and shareholder approval

Summary on the key points:

Rule 2 sets out the procedures and requirements for independent advice, committees, and shareholder approval in the context of offers, delistings, and privatisations. It mandates that a board receiving an offer must form an independent committee to evaluate the offer's fairness and reasonableness, and appoint a competent independent financial adviser to provide written advice. This advice must be disclosed to shareholders. For delistings, the rule specifies that approval from at least 75% of disinterested shareholders, with no more than 10% opposing the proposal is required. "Disinterested shares" exclude those owned by the offeror or persons acting in concert with it. Additionally, compulsory acquisition rights can only be exercised if 90% of disinterested shares are acquired.

Rule 2 sets out the costs associated with schemes of arrangement, requiring the party seeking privatisation to bear expenses if the scheme is not approved. It emphasises the need for independent advice in cases of reverse takeovers or conflicts of interest, and details the composition of independent committees, which should include non-executive directors without direct interests in the offer. This Rule also states the conditions under which an adviser may not be regarded as being independent. The Executive may aggregate transactions to determine control acquisition or privatisation efforts. Shareholder meetings must comply with company constitutional documents and relevant laws and voting on shareholder matters must be conducted by poll, with results announced.

2.1 Recommendations in relation to an offer

The board of a company that receives an offer or is approached with a potential offer must establish an independent committee to make recommendations on the offer's fairness and reasonableness as well as acceptance or voting. With the prior approval of the independent committee, the board must promptly appoint a competent independent financial adviser to provide written advice to the independent committee regarding the offer's fairness and reasonableness and on acceptance and voting. The independent financial adviser's written advice, including reasons, must be communicated to shareholders in the offeree board circular, along with the independent committee's recommendations.

The board must announce the appointment of the independent financial adviser in the initial offer announcement or as soon as the appointment is made.

2.2 Approval of delistings by independent shareholders

Neither the offeror nor any persons acting in concert with the offeror may vote at the shareholder meeting convened under the Listing Rules, if any, to approve the delisting of the company after the proposed offer.

Delisting approval requires at least 75% of votes from disinterested shares (in person or by proxy) in favor of the delisting and no more than 10% of votes against the delisting from all disinterested shares. The offeror must also be able to and must exercise its rights of compulsory acquisition for the delisting resolution to be valid.

Note to Rule 2.2:

If the offeree company is in a jurisdiction without compulsory acquisition rights, the Executive may waive this requirement, provided certain conditions are met, such as extending the offer acceptance period for longer than normally required and notifying shareholders of the extended closing date and implications of non-acceptance. The resolution for delisting requires the offeror and its concert parties to have received acceptances and made purchases of 90% of the disinterested shares since the announcement of a firm intention to make an offer.

2.3 Costs of scheme of arrangement

If a scheme of arrangement is used to privatise a company and it is not recommended by the independent committee or recommended as fair and reasonable by the financial adviser, the person seeking privatisation must cover all expenses incurred by the offeree company related to the privatisation proposal if the scheme is not approved.

2.4 Board of offeror company

The board of an offeror must obtain independent advice for offers involving a reverse takeover or when there is a conflict of interest, and this advice must be communicated to shareholders.

Notes to Rule 2.4:

General

Independent advice on whether this is in the interest of shareholders should be obtained before announcing an offer or revised offer. Oral advice may be sought initially, with full written advice to follow. The announcement must summarise the advice, and the full advice must be shared with shareholders promptly, or at least 14 days before any approval meeting. All related documents must include a directors' responsibility statement under Rule 9.3.

Reverse takeovers

A reverse takeover is defined as a transaction where the transaction will increase the offeror's issued voting share capital by more than 100%.

Conflicts of interest

Conflicts of interest between the offeror and offeree company may arise from significant cross-shareholdings, common directors, or substantial shareholders in both companies. The Executive may waive Rule 2.4 for substantial shareholders not acting in concert with the offeror or offeree company directors. Waiver applications must be submitted as early as possible..

Offers by controlling shareholders

Rule 2.4 generally does not apply to offers by controlling shareholders or those acting in concert with them if the only conflict of interest arises from directors of the offeror also being directors of the offeree company.

2.5 Offers for companies that control the offeror

Rule 2.5 requires the establishment of an independent committee when a public company in Hong Kong, or its subsidiary, proposes an offer for a company that, together with any persons acting in

concert with the offeree company, controls the offeror, directly or indirectly.

2.6 Persons not suited to give independent advice

Rule 2.6 specifies that individuals which are part of the same group as the financial or professional adviser (e.g., a stockbroker) to the offeror or offeree company, or if they have (or had) a significant connection—financial or otherwise—with either party or their or their controlling shareholders, which may appear to pose a conflict of interest, are not suitable to provide independent advice.

Note to Rule 2.6:

A significant connection within 2 years before an offer period is likely to create a conflict of interest or affect the objectivity of advice.

2.7 Advice to independent shareholders

Rule 2.7 mandates that independent advisers should focus on the interests of independent shareholders if there are shareholders with non-independent interests in the transaction beyond their shareholding.

2.8 Independent committees

Rule 2.8 states that independent committees should consist of non-executive directors without direct or indirect interests in the offer, except as shareholders of the offeree company. The Executive must be consulted where there are uncertainties. If forming an independent committee is not possible, the independent financial adviser assumes responsibility for representing independent shareholders' interests.

2.9 Shareholders votes to be conducted by way of poll

Rule 2.9 mandates that shareholder votes required by the Codes must be conducted by poll. The company must appoint its auditors, share registrar, or qualified external accountants as scrutineers for the voting. The scrutineer's identity and poll results must be announced, detailing the number of shares of each class voted for and against the resolution, and the percentage of the relevant class of share capital these numbers represent. For schemes of arrangement requiring "a majority in number" approval, the number of shareholders voting for and against, the percentage of shareholders voting, and the number of CCASS Participants (as defined under the General Rules of the Central Clearing and Settlement System) instructing HKSCC Nominees Limited to vote must also be disclosed.

2.10 Takeovers and privatisation by scheme of arrangement or capital reorganisation

Rule 2.10 specifies that acquisitions or privatisations via schemes of arrangement or capital reorganisation require approval by at least 75% of votes from disinterested shares, with no more than 10% of disinterested shares voting against in additional to other voting requirements under applicable laws.

The Executive may aggregate transactions to assess whether the person seeks to obtain or consolidate control or privatise the company through the transactions. The Executive may waive requirements if there is no substantial change in shareholding or control. Shareholders' economic interests should remain unaffected by a proposal's implementation, except in cases of debt restructuring involving the company.

2.11 Exercise of rights of compulsory acquisition

Rule 2.11 outlines the conditions for exercising compulsory acquisition rights in a takeover or privatisation. These rights can only be used with the Executive's consent and if 90% of disinterested shares are acquired through offer acceptances and purchases within 4 months of the initial offer announcement.

Unless the Executive consents, compulsory acquisition rights in an acquisition or privatisation by way of an offer can only be exercised if, alongside legal requirements, the offeror and its concert parties secure acceptances or purchases of at least 90% of the disinterested shares from the announcement of a firm offer intention until 4 months after the initial offer document is published.

1. Conflicts of interest

Conflicts of interest are identified when there are significant cross-shareholdings, common directors, or substantial shareholders between the offeror and offeree companies.

2. Competent independent advice

Competent independent advice is crucial in certain specified transactions under the Codes, requiring clear reasoning and recommendations, and that the adviser has discussed all

relevant factors with the independent board committee. The offeree company's board should appoint an independent adviser promptly upon learning of a potential offer.

3. When there is uncertainty about financial information

When significant financial information is uncertain, such as a qualified audit report, material provision, contingent liability or uncertainty as to the real value of a substantial asset, these uncertainties and their implications should be highlighted by the board and independent advisers.

4. When no recommendation is given or there is a divergence of views

If the board cannot provide a recommendation or if there is a divergence of views on an offer, this must be communicated to shareholders, including arguments for acceptance or rejection. The Executive should be consulted in advance regarding the explanation to be given and when a financial adviser cannot determine if an offer is fair and reasonable.

5. Success fees

Success fee arrangements between an adviser and the offeree company may create conflicts of interest, disqualifying the adviser as independent. For instance, a fee payable only if an offer fails typically creates such a conflict. The Executive should be consulted in cases of doubt.

6. Particular provisions for Rules 2.2, 2.10 and 2.11

Disinterested shares under Rules 2.2, 2.10, and 2.11 are defined as shares not owned by the offeror or those acting in concert with it. These rules apply separately to each class of share capital if multiple classes exist.

7. Clarification of the application of Rule 2.2 and Rule 2.10 and other requirements of the Takeovers Code

Rule 2.2, applying similar requirements as Rule 2.10, aims to prevent delisting proposals from coercing independent shareholders into accepting an offer.

If a company proposes asset or operation disposal and either the proposal may affect its listing suitability or there is a proposal to withdraw its listing, the Executive must be consulted at an early stage. Rule 2.10 and other Takeovers Code requirements would typically apply, and the Executive may aggregate related transactions completed within 12 months.

$\textbf{8.} \quad \text{Shareholders' meetings held for the purpose of Rules 2.2 and 2.10}$

A "duly convened meeting of shareholders" under Rules 2.2 and 2.10 is defined as a meeting organised in accordance with the offeree company's constitutional documents and the company law of its place of incorporation. Offeree companies and their advisers are advised to seek legal advice and, if necessary, guidance and directions from relevant courts regarding meetings for considering a scheme of arrangement or capital reorganisation.

Rule 3 – Announcements of offers or possible offers

Summary on the key points:

Rule 3 addresses announcements related to offers or possible offers. The responsibility for making announcements before the offeree company's board is approached lies with the offeror or potential offeror. After the board is approached, this responsibility shifts to the offeree company. Offerors or potential offerors must make an announcement if there is rumor or speculation about a possible offer, undue movement in share price or volume, or if negotiations extend beyond a restricted group. The potential vendor must also announce if their actions lead to speculation or undue movement in share price or volume of share turnover.

Agreements and letters of intent related to offers should be disclosed to the Executive unless publicly announced. The Executive should be consulted in cases of doubt, especially regarding undue share price movements or when gathering irrevocable commitments. Announcements should be made immediately if acquisitions of voting rights trigger obligations under specific rules. A firm intention to make an offer should only be announced when the offeror can implement the offer, and the announcement must include specific details such as terms, identity, and conditions. The Executive may require evidence of resources to ensure that the offeror can satisfy its obligations. Announcements of possible offers should be brief, and monthly updates are required if no further announcements are made. Additionally, Rule 3 states that parties may request for a suspension of trading to prevent an uninformed market and emphasizes on the need for clear statements to avoid misleading the market. The offeree company can also request the Executive to impose a time limit on the potential offeror to clarify its intentions during the offer period.

3.1 Announcements to be made by offeror or potential offeror

Before approaching the offeree company's board, the offeror or potential offeror is typically responsible for making any announcements. After the approach, the primary responsibility shifts to the offeree company (as per Rule 3.2). However, the offeror or potential offeror will be responsible for making announcements if it or its concert parties take actions that necessitate an announcement. They should also monitor the offeree company's share price and trading volume for unusual movements..

The offeror or potential offeror must make an announcement in the following situations:

(a) before an approach is made, if the offeree company is subject to rumors or speculation about a possible offer, or if there is undue movement in its share price or volume of share turnover, and it is reasonable to conclude that the potential offeror's actions have caused this:

- **(b)** when negotiations or discussions are about to involve more than a very limited number of people outside the necessary parties;
- (c) immediately upon acquiring voting rights that trigger an obligation to make an offer under Rule 26.

The offeror should consult the Executive if they wish to approach a wider group for purposes such as arranging financing, seeking irrevocable commitments or organising a consortium.

3.2 Announcements to be made by offeree company

After the offeree company's board is approached, the primary responsibility for making an announcement shifts to the offeree company.

The offeree company must announce when:

- (a) a firm intention to make an offer is communicated from a credible source, regardless of the board's stance on the offer;
- **(b)** following an approach, the company becomes the subject of rumors or speculation, or if there is undue movement in its share price or volume of share turnover, regardless of whether there is a firm intention to make an offer;
- (c) negotiations between the offeror and offeree company are about to involve more than a very limited number of people outside the necessary parties;
- (d) the board is aware of negotiations between a potential offeror and shareholders holding 30% or more of voting rights, or when the board is seeking potential offerors, and when there are rumors or significant share price or share turnover volume movements or when more than a very restricted number of potential purchasers or offerors will be approached.

In cases of doubt regarding announcements, consultation with the Executive is advised.

3.3 Announcements to be made by potential vendor

The potential vendor must make an announcement when:

- (a) negotiations or discussions occur between a potential offeror and a shareholder (or group) holding 30% or more of the voting rights; and
- **(b)** the company faces rumours, speculation about a possible offer, or unusual share price or trading volume movements, provided there are reasonable grounds to believe the potential vendor's actions (e.g., inadequate security) caused the situation.

In cases of doubt regarding announcements, consultation with the Executive is advised.

Notes to Rules 3.1, 3.2 and 3.3

1. Agreements and letters of intent

Agreements and letters of intent related to offers should be disclosed to the Executive unless publicly announced.

2. Undue movements in share price and volume

Determining undue movements in share price or volume involves considering all relevant facts, including market conditions, sector trends, company-specific information, trading activity, and the time period over which the movement occurred (not just percentage changes). Consultation with the Executive is recommended in uncertain situations.

3. Clear statements

The Executive typically does not require an announcement under Rule 3.1(a) if the price or volume movement, rumor, or speculation is due to a clear and unequivocal formal public announcement, such as a disclosure under Part XV of the Securities and Futures Ordinance or an announcement of an intention to purchase.

4. Gathering of irrevocable commitments

An offeror may approach a limited number of shareholders to obtain irrevocable commitments. Consultation with the Executive is required before approaching shareholders for irrevocable commitments, expect if the shareholder has a material interest (5% or more voting rights with concert parties) in the offeree company. The Executive may allow certain shareholders to be informed of a proposed offer not yet publicly announced, provided that the arrangements will give the shareholder adequate information and a realistic opportunity to consider the commitment and seek independent advice if needed. The financial adviser is responsible for compliance with relevant legislation and regulations.

3.4 Suspension of trading

When an announcement is required under Rule 3, the offeror or offeree company should notify the Executive and the Stock Exchange immediately that an announcement will be forthcoming. If it is possible that an uninformed market for shares of the offeror or offeree company could develop before publication of the announcement, a suspension of trading should be considered until the announcement is published. A potential offeror must not attempt to prevent the offeree company's board from making an announcement or requesting a trading suspension.

3.5 Announcement of firm intention to make an offer

An announcement of a firm intention to make an offer should only be made when the offeror is confident in their ability to implement the offer. The financial adviser also shares responsibility for this assurance.

The announcement of a firm intention to make an offer must include:

(a) the terms of the offer;

- **(b)** identity of the offeror, including the ultimate controlling shareholder and the ultimate parent company. If there is a listed company in the chain, its identity must also be disclosed;
- **(c)** details of any existing holdings of voting rights and rights over shares in the offeree company. This includes:
 - i. Holdings owned or controlled by the offeror.
 - ii. Holdings owned or controlled by any person acting in concert with the offeror.
 - iii. Holdings for which there is an irrevocable commitment to accept the offer.
 - iv. Holdings related to convertible securities, warrants, or options.
- (d) information on any outstanding derivatives related to the offeree company's securities entered into by the offeror or any person acting in concert with it;
- (e) all conditions to which the offer is subject, including acceptance, listing, and capital increase conditions;
- (f) any arrangements (e.g. options, indemnity) related to shares of the offeror or offeree company that might be material to the offer must be disclosed;
- (g) details of agreements or arrangements concerning the invocation of pre-conditions or conditions to the offer, including consequences and break fees;
- (h) information on any relevant securities in the offeree company that the offeror or any person acting in concert with it has borrowed or lent, except for borrowed shares that have been on-lent or sold;
- (i) if the offer involves a sale by a vendor of shares in the offeree company, details of (i) any consideration, compensation, or benefit paid or to be paid to the vendor or its concert parties; and (ii) any understanding, arrangement, agreement, or special deal between the offeror or its concert parties and the vendor and its concert parties;
- (j) any understanding, arrangement, agreement, or special deal between any shareholder of the offeree company and either the offeror and any of its concert parties, or the offeree company and its subsidiaries or associated companies.

If any of the conditions from paragraphs (c) to (j) do not apply, a negative statement must be made.

The financial adviser or another appropriate third party must confirm in the offer announcement that the offeror has sufficient resources to satisfy full acceptance of the offer

Notes to Rule 3.5 include:

1. Holdings by a group of which an adviser is a member

Holdings or borrowings of the offeree company's shares, options or derivatives by an adviser's group may not need to be disclosed in initial announcements for secrecy reasons, but details should be obtained as soon as possible after the announcement and the Executives should be consulted. Details should be disclosed if they are significant.

2. Irrevocable commitments

Irrevocable commitments to accept an offer must specify conditions under which they may cease to be binding, such as a higher offer.

3. Confirmation of resources

The Executive may require evidence of available resources to satisfy the offeror's obligations to make the offer and to complete the purchase of shares. Financial advisers must ensure the adequacy of resources with due diligence and are not expected to provide cash themselves if they acted responsibly to ensure that the cash was available. Confirmation of resources is required for offers involving cash or other assets, except for new securities issued by the offeror.

4. Subjective conditions

Companies and their advisers must consult the Executive before issuing announcements that are not wholly objective (as per Rule 30.1).

5. New conditions for increased or improved offers are referenced in Rule 16.2.

6. Pre-conditions

Potential offerors considering a possible offer without commitment to make the offer must consult the Executive before making a pre-conditional possible offer announcement.

Possible offer announcements with pre-conditions must clearly state whether these conditions must be satisfied or are waivable to avoid misleading shareholders.

If a potential offeror specifies pre-conditions and commits to proceeding with the offer if the pre-conditions are fully satisfied or waived, the announcement must be structured as a pre-conditional Rule 3.5 announcement, clarifying the waivability of pre-conditions. These pre-conditions may be subjective depending on the specifics of the case.

7. Conditional offers

The Executive should be consulted for offers conditional on acceptance or undertakings by one or more shareholders if the announcement lacks a statement from those shareholders.

3.6 Announcements of certain purchase

Acquisitions of voting rights by an offeror or its concert parties may trigger obligations to make cash or securities offers, offer increases, or mandatory offers under Rules 23, 24, or 26. Announcements must be made immediately after acquisitions that trigger such

obligations, detailing the number of voting rights acquired, the price paid, and any unannounced information required by Rule 3.5.

Note to Rule 3.6

Potential offerors

Rule 3.6 requires an immediate announcement by any publicly announced potential offeror if they or any person acting in concert with them acquires voting rights above a publicly indicated price level of a possible offer, or if they buy above the price level of an existing third-party offer. Such disclosure must comply with Rule 22.1.

3.7 Announcement of a possible offer

Rule 3.7 states that until a firm intention to make an offer is notified, a brief announcement by a potential offeror or the offeree company about ongoing talks or consideration of an offer suffices. If no further announcement is made within a month, an update on the progress of talks or the consideration must be announced. This obligation continues on a monthly basis until a firm intention to make an offer is announced under Rule 3.5 or a decision not to proceed is made. If talks are terminated or a decision not to proceed with an offer is made, an announcement must be made.

Notes to Rules 3.7

1. Identity of offeror

The Executive may require the potential offeror to be named in announcements under Rule 3.7, especially if the identity is price-sensitive.

2. New offeror

If a new offeror emerges, the same obligations will apply to them.

3. Offeror to be bound by statement made

Subject to Note 4 below, a potential offeror is bound by statements made before an announcement of a firm intention to make an offer about the terms of a possible offer if an offer is subsequently made, unless they reserved the right not to be bound in certain circumstances, which then arise, or in wholly exceptional circumstances.

4. Statements relating to offer price

The disclosure of an indicative offer price is prohibited before a firm offer announcement, except in exceptional circumstances. If a potential offeror makes a statement about a possible offer price or exchange ratio, any subsequent offer must be on the same or better terms.

3.8 Announcement of numbers of relevant securities in issue

When an offer period begins, the offeree company must promptly announce details of all classes and numbers of relevant securities issued. If the offer is not or not likely to be solely

in cash, the offeror or potential offeror must also announce similar details about its relevant securities and those of any company whose securities are offered as consideration after any announcement on the identity of the offeror.

The announcement should remind associates of the offeree company, offeror, or potential offeror to disclose dealings in the relevant securities in the offeree company. In a securities exchange offer, this reminder extends to dealings in the offeror's or potential offeror's securities or the securities of any company which are offered as consideration.

The text of Note 11 to Rule 22 must be included in any announcement starting an offer period. If the information changes during the offer period, a revised announcement is required promptly.

3.9 Time limit for the potential offeror to clarify its intentions

The offeree company is allowed to request the Executive to set a time limit for the potential offeror to clarify its intentions after the announcement of a possible offer is made but before the announcement to make a firm intention. The Executive can impose such a time limit in exceptional circumstances where appropriate, even without a request. The potential offeror must announce a firm intention to make an offer or a decision not to proceed before the time limit expires. If the latter, Rule 31.1(c) will be applicable to the announcement.

Note to Rule 3.9

The Executive will consider various factors when deciding on imposing a time limit for a potential offeror to clarify its intentions under Rule 3.9.

Factors include the current duration of the offer period; reasons for the offeror's delay in issuing a firm intention announcement; the proposed offer timetable, if any; any adverse effects the offer period has had on the offeree company; and the conduct of the parties involved in the offer.

Rule 4 -No frustrating action

Summary of the key points:

Rule 4 prohibits any frustrating actions by the board of an offeree company once a bona fide offer has been communicated or is anticipated. The Rule mandates that no actions should be taken that could frustrate the offer or deny shareholders the opportunity to evaluate it, without shareholder approval in a general meeting. Specific actions considered frustrating include issuing shares, creating convertible securities, significant asset transactions, entering non-ordinary course contracts, and share buybacks. The Executive may grant a waiver where there are contractual obligations and special circumstances that require these actions to be carried out. Shareholder meetings are not required if the offeror consents to the action. This Rule also provides guidance on entering into service contracts, voting by controlling shareholders where there may be conflict of interest, contents of the notice of general meeting, and the definition of "material amount" in transactions. Additionally, it addresses scenarios where an offeror may not need to proceed with an offer. Requirements in relation to established share option schemes and the declaration of interim dividends during an offer period, which may require consultation with the Executive, are also set out under Rule 4.

If the board of the offeree company have been given notice about a bona fide offer or has reasons to believe that a bona fide offer is forthcoming, the board is prohibited from taking any action that could frustrate a bona fide offer or deny shareholders the opportunity to decide on the offer without shareholder approval in a general meeting.

These frustrating actions include issuing shares; creating, issuing, granting or permitting the creation, issue or grant of convertible securities, options, or warrants with the offeree company's shares; selling, disposing or acquiring significant assets; entering into contracts in the non-ordinary course of business; or causing a share buy-backs, purchase or redemption by the offeree company, subsidiary or associates or providing financial assistance for such actions.

If the offeree company is under a prior contractual obligation, Rule 4 typically does not apply. Special circumstances require early consultation with the Executive, who may grant a waiver from the requirement for shareholder approval.

Notes to Rule 4

1. Consent by the offeror

Shareholder meetings are not required if the offeror consents to the action. In cases of competing bids, consent from all offerors and potential offerors are necessary. Consent must be disclosed in an announcement or lodged with the Executive if no announcement will be made.

2. Services Contracts

Amending or entering into service contracts with directors, or significantly altering their terms of employment, is considered outside the ordinary course of business if it results in an abnormal increase in emoluments or a significant improvement in terms of service. Rule 4 allows for increases or improvements in director service contracts due to genuine promotions or new appointments, but requires prior consultation with the Executive.

3. Votes of controlling shareholders and directors

The Executive should be consulted regarding the voting by controlling shareholders, directors, and their associates at shareholder meetings if there is an actual or potential conflict of interest.

4. Deleted

Notice of general meeting

Notices for shareholder meetings under Rule 4 must include details about the offer or potential offer.

6. "Material amount"

The term "material amount" for disposals or acquisitions is determined by the Executive using the "discloseable transaction" test under the Listing Rules, and the Executive may aggregate multiple transactions to assess materiality. The Executive must be consulted when in doubt.

7. When there is no need to proceed with an offer

The Executive may permit an offeror to withdraw an offer before publishing the offer document if the offeree company passes a resolution in a general meeting under Rule 4 or announces a transaction that would require such a resolution and is pursuant to a prior contract or that the Executive has ruled that there is an exceptional obligation or circumstance

8. Established share option schemes

The Executive typically consents to the granting of share options under established schemes if the timing and level of the scheme align with normal practices.

9. Interim dividends

Declaring and paying interim dividends outside the normal course during an offer period may contravene General Principle 9 and Rule 4, necessitating prior consultation with the Executive by the offeree company and its advisers.

Rule 5 -No withdrawal of an offer

Summary of the key points:

Rule 5 states that once an offeror announces a firm intention to make an offer, they must proceed with the offer unless the Executive consents to a withdrawal. Withdrawal is permissible if the offer is contingent on a specific condition that remains unfulfilled. A general change in economic, industrial, or political circumstances does not justify withdrawal; only exceptional and specific circumstances may support such an application to the Executive. The Executive typically consents to withdrawal if a competing offer is made that is higher and carries no additional conditions beyond those necessary for implementation. If an offer is withdrawn or lapses due to unmet conditions, the offeror must announce the reasons for the withdrawal. The Executive may also consult the offeree company and its advisers when considering consent for withdrawal under Rule 5.

Once an offeror announces a firm intention to make an offer, except with the Executive's consent, they must proceed with the offer unless a specific condition that is a pre-requisite to the offer is not fulfilled.

Notes to Rule 5

1. Specific change of circumstances

A general change in economic, industrial, or political circumstances does not justify a withdrawal; only exceptional and specific circumstances may support such an application to the Executive.

2. Competing offer

The Executive typically consents to withdrawal if a competing offer is made that is higher and carries no additional conditions beyond those necessary for implementation. Consultations should be made with the Executives when a securities exchange offer is involved.

3. Announcement required

If an offer is withdrawn or lapses due to non-fulfillment of a condition, the offeror must announce the reasons for the withdrawal.

4. Frustrating action and invoking of conditions

Reference is made to Note 7 to Rule 4 and Note 2 to Rule 30.1 regarding frustrating actions and invoking conditions.

5. The Executive may consult the offeree company and its advisers when considering whether to grant consent for withdrawal.

Rule 6 -Equality of information to competing offerors

Summary of the key points:

Rule 6 mandates the equal provision of information to competing. It stipulates that any information given to one offeror or potential offeror must be made available to another upon request, provided the request is specific and not general. This rule applies when there is a public announcement of an offeror or when a potential offeror is authoritatively informed of the other offeror's existence. The offeree company is required to provide details of its outstanding voting rights, issued and allotted shares, and any rights that could lead to share issuance or allotment during the offer period within 48 hours of a request. Additionally, any new share allotments or rights exercises must be promptly communicated to the offeror. In management buy-outs, the offeree company must share with competing offerors any information given to external providers or potential providers of finance. The Rule also specifies that information sharing should only be subject to confidentiality and reasonable use restrictions, and any conditions should be consistent across all offerors. The Executive should be consulted in cases of doubt or specific circumstances.

Any information provided to one offeror or potential offeror must be equally and promptly provided to another offeror or bona fide potential offeror upon request, even if the latter is less welcome. The requesting offeror must specify the questions they need answers to and cannot request all information given to a competitor in general terms. This requirement applies when there has been a public announcement of the offeror or potential offeror that has received the information, or when the requesting party has been authoritatively informed of another potential offeror's existence.

Notes to Rule 6

1. Offeree company's obligation following offeror's announcement

Following an offeror's announcement of a firm intention to make an offer, the offeree company must provide details of its outstanding voting rights, issued and allotted shares, and any conversion or subscription rights under which the shares may be conditionally allotted or issues during the offer period within 48 hours of a request. For conditionally allotted shares, details on the conditions and date of satisfaction of these conditions must be disclosed. For rights, details on the number of shares with separate disclosures on the shares where the rights attached will commence or expire on different dates and the prices at which the rights can be exercised.

2. Allotment of shares by offeree company during offer period

The offeree company must promptly inform any offeror of any share allotments, issuances, or exercises of rights specified in Note 1 of Rule 6 during the offer period, providing full details without delay. The offeror is required to ensure that shareholders of the shares that

is of a same type as those under the offer, issued or allotted during this period, are given the opportunity to accept the offer. If uncertainties arise, consultation with the Executive is mandatory.

3. Management buy-outs

In management buy-outs or similar transactions, the offeree company must provide competing offerors with at least the information given to external finance providers or potential finance providers (equity or debt) to the offeror. The directors of the offeree company involved in making an offer are expected to cooperated with the independent board committee of the offeree company and its advisers.

In management buy-outs or similar transactions, the offeror must provide the independent board committee of the offeree company or its advisers with at least the same information given to external finance providers or potential finance providers upon request.

The Executive should be consulted in all circumstances related to the provision of information under Rule 6.

4. Conditions attached to the passing of information

Information passed under Rule 6 should only be subject to conditions related to confidentiality, restrictions on using the information to solicit customers or employees, and its use solely in connection with the offer. Any conditions imposed on the passing of information should not be more burdensome than those imposed on other offerors or potential offerors.

Requiring a party to sign a hold harmless letter in favor of a firm of accountants or other third parties is generally acceptable, provided similar requirements are imposed on other offerors or potential offerors.

Rule 7 -Resignation of directors of offeree company

Summary of the key points:

Rule 7 restricts the resignation of directors from an offeree company during a takeover offer. It stipulates that once a bona fide offer is communicated or anticipated, directors' resignations should not take effect until after the publication of the closing announcement on the first closing date or the announcement that the offer is unconditional, whichever occurs later. In cases involving a whitewash waiver, resignations should be delayed until after the results announcement of the shareholders' meeting approving the waiver. Additionally, the Executive's consent is generally required for director resignations, especially if the offeror is a controlling shareholder before the offer period, subject to other requirements if a director is eligible to serve on the independent board committee.

If the board of the offeree company have been given notice about a bona fide offer or has reasons to believe that a bona fide offer is forthcoming, directors' resignations should not take effect until after the publication of the closing announcement on the first closing date of the offer or the announcement that the offer has become or been declared unconditional, whichever is later, unless consent is given by the Executive. In transactions involving a whitewash waiver, directors' resignations should not take effect until after the publication of the results announcement related to the shareholders' meeting to approve the waiver under Note 1 on dispensations from Rule 26.

Notes to Rule 7

1. Restrictions on control by offeror

Rule 26.4 should be observed, which restricts the offeror's ability to control the offeree company before the offer document date.

2. Executive's consent.

The Executive will typically consent to a director's resignation if the offeror is a controlling shareholder before the offer period, except if the director is eligible to serve on the independent board committee under Rule 2.1. In this case, the Executive will not usually consent to such a director's resignation unless consent is also granted for the exclusion of that director from the independent board committee under Rule 2.8.

Rule 8 – Timing and contents of documents

Summary of the key points:

Rule 8 focuses on the timing and content requirements for documents related to company offers. Information about companies involved in an offer must be made equally available to all shareholders simultaneously and in the same manner, however, confidential information can be shared with a bona fide potential offeror. Media communications during an offer period must not release new material information. Meetings with shareholders or investment professionals can occur during the offer period, provided that no new material information or significant new opinions are shared. A financial adviser must confirm compliance with this rule. Associates, such as financial advisers or stockbrokers, can issue circulars to their clients if approved by the Executive. Profit forecasts, asset valuations, and estimates must comply with the Takeovers Code. Any new material information or opinions must be announced immediately to shareholders and the market.

The offer document must be dispatched within 21 days (or 35 days for securities exchange offers) after the announcement of the terms of the offer. The Executive's consent is required for delays. The offeree company must send a circular to shareholders within 14 days of the offer document, including the board's views and financial adviser's advice on the offer, and the Rule encourages combining offer documents and offeree board circulars in a composite document. Subsequent documents must update any material changes in previously published information. Documents must be in English or Chinese, with translations provided unless waived by the Executive. Documents can be disseminated in hard copy, electronic format, or published on relevant websites, complying with applicable laws and regulations. Certain documents must be available for inspection on the issuer's or offeree's website during the offer period. Overseas shareholders should not be excluded from receiving offer documents unless it is unduly burdensome. Evidence of the date of dispatch of documents must also be provided to the Executive.

8.1 Availability of information

Information on the companies involved must be made equally available to all shareholders simultaneously (as much as possible) and in the same manner.

Notes to Rule 8.1

1. Furnishing of information to offerors

Rule 8.1 allows confidential information exchange between an offeree company and a bona fide potential offeror.

2. Press, television and radio interview

Parties involved in an offer must avoid releasing new material during media interviews or discussions. Interviews, discussion and written communication on the offer provided to media is also subject to the requirements under Note 3 below.

3. Meetings

Subject to Rule 34, meetings between the offeror, offeree company or their advisers and shareholders (of the offeror or offeree company), investment analysts, stockbrokers, or investment managers or advisors can occur during the offer period, provided that no new material information or significant opinions are shared. A financial adviser representative must be present at such meetings and confirm in writing to the Executive by noon the next business day that no new material information or opinions were shared, except with consent from the Executive.

Printed materials like press releases or slide printouts can be distributed at meetings if they are fairly presented and do not contain new material information or opinions. These printed materials will generally not be considered documents requiring submission to the Executive for comment under Rule 12.1, however, the financial adviser must confirm that no new material information or opinions were shared using the same method as in the paragraph above.

Financial advisers are expected to ensure compliance with these provisions and may record meetings for verification, though it is not mandatory. Advisers must ensure that no meetings occur without the knowledge of the relevant financial adviser.

The provisions apply to all meetings during an offer period, regardless of location or medium, including in-person, telephone, or electronic meetings, even if only one person or firm is involved. Meetings with employees in their capacity as employees are generally not covered, but consultation with the Executive is advised if employees hold significant shares.

4. Information issued by associates (e.g. financial advisers or stockbrokers)

Rule 8.1 allows brokers or advisers to issue circulars to their investment clients or advisers to any party to the transaction during the offer period, provided they have Executive approval.

Associates of an offeror or offeree company must ensure that new information is not restricted to a small group and must not disclose statements or opinion involving information that is not generally available. The associate's status must be clearly disclosed.

Entities falling under class (5) of the definition of acting in concert and class (2) of the definition of associate (generally including entities within the same group as financial advisers) should cease issuing research reports on the offeree or offeror company during the offer period unless approved by the Executive. Previously distributed research reports do not need to be retrieved, but distribution should stop, and they should be removed from websites. The Executive considers research reports issued within 6 months before the offer period as "live".

5. Profit forecasts, asset valuations and eastimates etc.

All parties must comply with the verification and reporting obligations under the Takeovers Code regarding profit forecasts, asset valuations, and estimates, as non-compliance may be a breach of the Takeovers Code.

6. Announcements and circulars

Any material new information or significant new opinions released during an offer must be immediately announced to shareholders and the market. The Executive may require dissemination via a circular. If new information or opinions cannot be substantiated as per the Takeovers Code, they must be clearly stated and formally withdrawn in the announcement or circular.

8.2 Offer document time limit

The offer document must be dispatched by the offeror within 21 days of the announcement of the terms of the offer, or 35 days for a securities exchange offer. A composite document combining the offer document and offeree board circular is encouraged for agreed offers. Executive consent for extension is needed if the offer document cannot be posted within the specified period (See also Rules 8.4 and 15.1.).

Notes to Rule 8.2

1. Schemes of arrangement

In schemes of arrangement, the Executive should be consulted for extended periods to accommodate court schedules.

2. Pre-conditions

If an offer is subject to pre-conditions that cannot be fulfilled within the time frame, Executive consent is required, and the offer document should generally be posted within 7 days after fulfilling all pre-conditions.

8.3 Contents of offer document

The offer document must include information required by Schedule I and any other relevant information for shareholders to make an informed decision.

8.4 Timing and contents of offeree board circular

The offeree company must send a circular to shareholders within 14 days of the offer document, containing information from Schedule II and any other relevant details for an informed decision-making. Executive consent is required for delays in posting the offeree board circular, contingent on the offeror agreeing to extend the first closing date by the delay period.

An extension of time restrictions under Rules 15.4, 15.5, and 16 will also be extended by the same delay period if consent is granted. The offer must remain open for at least 14 days

after the delayed offeree board circular is issued to give shareholders adequate time for consideration.

The offeree board circular must present the views of the offeree company's board or its independent committee on the offer, along with the financial adviser's written advice on whether the offer is fair and reasonable, including the reasons. If the financial adviser cannot provide this advice, the Executive should be consulted.

Note to Rule 8.4

Preparation of circular

The offeree company's board and advisers are responsible for preparing the offeree board circular promptly after an offer is announced to avoid delays. If all required information is not available in time, the board must consult the Executive immediately. A circular must be sent to shareholders within the timetable, detailing available information, reasons for any delay, and when the missing information will be available.

8.5 Subsequent documents

Subsequent documents sent to shareholders must include any material changes in previously published information. If no changes have occurred, this must be stated. Specific updates required include changes or additions to material contracts, shareholdings, dealings, directors' emoluments, special arrangements, ultimate ownership of acquired securities, dealings arrangements, and directors' service contracts.

If a profit forecast has been made, documents sent to shareholders of the offeree company must comply with Rule 10.5 requirements.

8.6 English/Chinese language

Documents to be written in either English or Chinese, accompanied by a translation in the other language unless a waiver is granted by the Executive.

Note to Rule 8.6

Reference is made to Note 5 of Rule 12, which discusses the requirement for confirmation of translation to be provided to the Executive after document publication.

Issuers of documents are allowed to send documents in either language or both, provided they ascertain the recipient's language preference and comply with applicable laws, the Listing Rules, regulations, and constitutional documents.

8.7 Method of dissemination of documents

The acceptable methods for disseminating documents include sending hard copies, electronic formats, or publishing on the issuer's or offeree company's website and the Stock Exchange's website, in accordance with the Listing Rules, subject to the terms under all applicable laws and relevant constitutional documents of the company.

Notes to Rule 8.7

It is important to comply with all applicable laws, the Listing Rules, regulations, and constitutional documents when disseminating documents electronically. Non-compliance may result in the document not being considered as despatched under Rule 8.7, and the Executive may extend the offer period until compliance is achieved.

Notes to Rule 8

1. Documents to be on display

Unless the Executive consents otherwise, certain documents must be made available for inspection on a website of the issuer of the offer document or offeree board circular from the time the offer document or offeree board circular is published until the end of the offer period. The offer document or offeree board circular must specify which documents are available and provide the website address for inspection. Immediate consultation with the Executive is required if there are difficulties in complying with this requirement.

Documents to be made available include:

- Memorandum and articles of association (or equivalent documents) of the offeror or offeree company;
- Audited consolidated accounts of the offeror or offeree company for the last 2 financial years;
- Any report, letter, valuation, or document referenced in any document issued by or on behalf of the offeror or offeree company;
- Written consents from financial advisers for the publication of their names in the document;
- Reports and consents related to any profit forecast, including those from auditors or
 consultant accountants and financial advisers, and letters from these persons to issue
 the document with the report or continue use of the report in a subsequent document;
- Valuation certificates and associated reports for any asset valuation, along with the valuer's consent for name publication;
- Documents evidencing irrevocable commitments to accept or reject an offer;
- A full list of dealings if the Executive has consented to aggregation of dealings (Note 4
 to paragraph 4 of Schedule I, Note 3 to paragraph 2 of Schedule II and Note 2 to
 paragraph 5 of Schedule III);
- Each material contract and service contract referred to in paragraph 26 of Schedule I and paragraph 9 of Schedule II;
- All derivative contracts disclosed under under Rule 22.1, paragraph 4 of Schedule I, paragraph 2 of Schedule II, or paragraph 5 of Schedule III, which must also be available

for inspection from the later of the time the offer document or the offeree board circular is published or the time of disclosure;

- Documents regarding financial arrangements which complies with the third sentence of paragraph 12(b) of Schedule I;
- Documents on an inducement fee or similar arrangement;
- Other documents as required by the Executive; and
- Any agreement, arrangement or memorandum containing terms of the agreement or arrangement disclosed under paragraph 14A of Schedule I.

2. Display of documents on websites

These documents must be provided in electronic form acceptable to the Executive for display on the SFC's website before the despatch of the offer document or offeree board circular. The documents must indicate which documents are on display and the website address where they are available.

After the offer period ends, arrangements can be made to remove the documents from the websites.

3. Overseas shareholders

The Executive generally does not waive the requirement for overseas shareholders to receive the offer document unless it is unduly burdensome, such as requiring registration as a prospectus under overseas law for a small number of shareholders. All material information in the offer document must be made available to overseas shareholders.

4. Date of despatch

Evidence of the date of despatch, such as a posting certificate or electronic confirmation, must be provided to the Executive for offer documents, revised offer documents, or offeree hoard circulars.

Rule 9 – Standard of care and responsibility

Summary of the key points:

Rule 9 emphasises on the standards of care and responsibility required for documents and statements related to offers or possible offers during an offer period. It mandates that all documents and statements related to an offer must meet the highest standards of accuracy, which is akin to those applicable to a prospectus, and they must be fairly presented. Language in documents must be clear and unambiguous. Financial advisers are held accountable for guiding their clients and public relations advisers in the release of information and ensure that directors are aware of the implications of their statements under the Takeovers Code. The document emphasises the use of unambiguous language, proper sourcing, and accurate representation in all communications. It also requires that shareholders receive sufficient information to make informed decisions about offers, with the same level of obligation from the offeror towards the offeree company's shareholders as to its own shareholders.

Directors are jointly and severally responsible for the accuracy of information in documents, they must confirm that opinions are based on careful consideration and that no material facts are omitted. If a director is to be excluded from this responsibility, the Executive's consent is necessary, and the reasons must be disclosed. This Rule also addresses delegation of responsibility, requiring directors to ensure competent supervision and full disclosure of relevant facts. It outlines procedures for board oversight during an offer, including prompt access to documents and dealings, and holding board meeting when necessary. Rule 9 further sets out the responsibilities in joint announcements and composite documents as well as requirements when there are conflicts of interests, situations where an offeror is controlled by another entity and when information about another company is included in the document or advertisement.

9.1 Prospectus standard

The highest standards of accuracy and fair presentation, which is similar to those applicable to a prospectus, must be applied to all documents and statements made during an offer period, regardless of whether it is made by the company directly or by an adviser or other relevant person on the company's behalf. The issuer of the document or statement must ensure the information remains accurate and up-to-date throughout the offer period, with shareholders being notified of any material changes promptly.

Notes to Rule 9.1

1. Financial advisers' responsibility for release of information

Financial advisers are responsible for guiding their clients and public relations advisers on information released during an offer period, ensuring compliance with the Takeovers Code.

Advisers must caution directors and officials at an early stage about the implications of their statements, especially during media interactions, as post-publication alterations to the impression given or the remarks made are challenging. The Executive may require a statement of retraction in cases of potential abuse. It is advised that giving comments on future profits, prospects, asset values, and offer revisions should be avoided.

2. Unambiguous language

Language in all documents must be clear and concise, avoiding ambiguity, especially with terms like "agreement", to prevent giving misleading impressions about commitments when there are no such commitments.

3. Sources

Sources for material facts must be clearly stated, with sufficient detail for assessment of its significance, or alternatively a cross-reference to documents containing the information that is previously sent to shareholders.

4. Quotations

Quotations must be used in context, with details of their origin included. Quotations in documents will imply board endorsement; therefore, they must be corroborated to the standards of the Takeovers Code, and include the directors' responsibility statement as per Rule 9.3.

5. Diagrams

Pictorial representations, such as charts, graphs and diagrams, must be accurate and, when relevant, to scale.

6. Use of television, videos, audio tapes etc.

The use of media like television, videos, and audio tapes requires prior consultation with the Executive, even if they are not advertisements under Rule 12.3.

7. Use of comparables

Comparables in documents must be a fair and representative sample, with clearly stated bases for their compilation.

9.2 Sufficient information

Shareholders must receive sufficient information and advice early enough to make informed and timely decisions about the advantages and disadvantages of an offer. The obligations to the offeree company's shareholders are equal to those of the offeror's own shareholders

9.3 Directors' joint and several responsibility

It must be explicit in the document that all directors of the issuing company jointly and severally accept full responsibility for the document's accuracy, confirming that, to the

best of their knowledge after making all reasonable inquiries, the opinions are based on careful consideration and that no omissions that would make the statement misleading exist.

9.4 Executive's consent for exclusion of directors

The Executive's consent is required to exclude any director from the responsibility statement, with reasons for the exclusion stated in the document.

Notes to Rules 9.3 and 9.4

1. Delegation of responsibility

If document supervision is delegated to a board committee, the remaining directors must reasonably believe the delegates are competent. Directors must disclose all facts about himself, his close relatives and related trusts as well as all facts and opinions he has knowledge of to the committee, especially those not known to other members or may not be considered by the committee, to ensure comprehensive document preparation. The requirements of the Listing Rules regarding responsibility for listing documents remain applicable.

The board must establish arrangements to monitor the offer process, ensuring directors can fulfill their responsibilities under the Takeovers Code. These arrangements include prompt provision of documents related to the offer, details of securities dealings, and any non-routine agreement, understandings, guarantees, expenditure and fees, or obligations; the directors responsible for the daily operations of the offer must justify their actions or proposed courses of action to the board; and advisers' opinions should be accessible by the board.

Board meetings should be held as necessary to keep directors informed of developments and actions taken. Directors with doubts about actions under the Takeovers Code should consult the Executive. Directors retain joint and several responsibility under Rule 9.3, regardless of these procedures. Directors are required to cooperate with the Executive's enquiries, providing board meeting minutes and relevant information promptly upon request.

2. Joint announcement and composite document

In joint announcements or composite documents, all directors of the offeror are responsible for all content other than those relating to the offeree company, while the offeree company directors are responsible for information related to the offeree company.

3. Conflicts of interest

Under certain circumstances, directors with conflicts of interest may amend their responsibility statements under Rule 9.3 to clarify non-acceptance of board views on offers. (Also reference See Note 3 to paragraph 1 of Schedule II)

4. When an offeror is controlled

If an offeror is controlled directly or indirectly by another entity, the Executive must be consulted. The Executive typically requires the directors of the offeror and the controlling entity, including ultimate parent company directors or listed company directors in the control chain to be responsible for documents issued by or on behalf of the offeror. For professional trustee companies, responsibility is assigned to the person directing or instructing the trustees.

5. Quoting information about another company

When a company issues documents with information about another company which is clear stated to be from published sources, directors are only responsible for the accuracy and fairness of the information's reproduction or presentation and the responsibility statement can be amended to reflect this. If the document includes opinions or unpublished information about another company, a responsibility statement from the issuing company's directors or the other company's directors is required. The qualified responsibility statement is not acceptable for opinions or unpublished information.

6. Confirmation of translation

Note 5 to Rule 12 sets out the requirements for the confirmation of translation to be provided to the Executive after document publication.

Rule 10 -Profit forecasts and other financial information

Summary of the key points:

Rule 10 addresses the standards and requirements for profit forecasts and other financial information published to shareholders. Directors are solely responsible for compiling profit forecasts with due care, while financial advisers must ensure the forecasts are prepared accurately. Assumptions underlying profit forecasts must be clearly stated in documents or announcements to shareholders, highlighting uncertainties and potential impacts on the reliability of the relevant forecast. The Rule contains general rules that apply to the selection and drafting of assumptions. Financial advisers, auditors or consultant accountants must review and report on the forecasts, ensuring they are based on sound accounting policies and calculations, except in certain cases like cash-only offers or with Executive consent.

Any profit forecast made before the offer period must be examined and reported on in shareholder documents alongside the required reports and consent letters from those making the profit forecasts. Subsequent documents related to an offer must confirm the continuing validity of the forecast, and stating that the financial advisers and accountants do not object to this confirmation. Statements implying profit forecasts, even without specific figures, must be reported on, and professional advisers should consult the Executive if in doubt. Forecasts of profit before taxation should include forecasts of taxation and other exceptional items. The Rule also covers the reporting requirements for unaudited profit figures published during an offer period and the conditions under which exemptions may apply. It addresses the implications of merger benefits statements in securities exchange offers, and that quantified statements of expected financial benefits will be treated as profit forecasts. Under Rule 10, any material changes in the financial or trading position of the offeror or offeree company must reported on if they constitute a profit forecast, with directors required to provide evidence of the steps taken to support any statements about the absence of material changes.

10.1 Standards of care

The highest standards of accuracy and fair presentation is also applicable to profit forecasts given to shareholders despite that profit forecasting carries inherent risks. Directors are solely responsible for compiling profit forecasts with due care and consideration. Financial advisers must verify that the directors have prepared the forecast with care and consideration.

Note to Rule 10.1

Existing forecasts

Advisers should check for any existing forecasts published to the public at the outset to expedite compliance with Rule 10.3(d).

10.2 The assumptions

When a profit forecast is included in documents addressed to shareholders or in announcements made on or after the start of the offer period, all assumptions, including commercial ones, relied on by the directors when drafting the profit forecast must be clearly stated.

Notes to Rules 10.1 and 10.2

1. Requirement to state the assumptions

Listing assumptions provides shareholders with useful information to assess the forecast's reasonableness and reliability. Uncertain factors that could materially affect the forecast's achievement should be highlighted and quantified where possible.

Limitations on forecast accuracy should be indicated, and a description of the business and major forecasting hazards should be included.

The responsibility for the forecast and its assumptions lies with the directors, but financial advisers must discuss these assumptions with their clients and ensure due care in the forecast's preparation. Auditors or consultant accountants must ensure that the accounting policies and calculations in profit forecasts are properly compiled based on the assumptions made.

Accountants are not responsible for the assumptions themselves but can advise the company on which assumptions should be included in the circular and how they should be described. Financial advisers and accountants have significant influence over the assumptions presented in a circular and should not allow unrealistic assumptions to be published or important ones to be omitted without appropriate commentary.

2. General rules

- (a) The following general rules apply to the selection and drafting of assumptions.
- Assumptions should be clear to shareholders, aiding their judgment on the forecast's reasonableness and uncertainties.
- Assumptions should be specific and definite, avoiding vague or general statements.
- Assumptions about factors directors can influence are permissible if clearly identified, but assumptions about the general accuracy of estimates should be avoided as all forecasts inherently rely on estimated numbers such as income and costs.
- Assumptions should not address the accuracy of accounting systems. Any deficiencies
 these systems, this should be qualified in the forecast itself, not covered by assumptions.

- Assumptions in profit forecasts should only address matters with a material impact on the forecast.
- (b) Specific assumptions may still cause uncertainty, such as those regarding unforeseen liabilities or the adequacy of provisions for legal claims. Additional information on existing provisions or circumstances which may give rise to potential liabilities is necessary.
- (c) In some cases, particularly for periods that have already ended, assumptions may not be required.
- 3. Report by independent financial adviser

An independent financial adviser to the offeree may fulfill the role of a financial adviser under Rule 10.1 and related notes.

10.3 Reports required in connection with profit forecasts

- (a) Profit forecasts by an offeror offering solely cash do not require reporting, this exemption may be extended to offers involving non-convertible debt instruments upon Executive consent.
- **(b)** In other cases, auditors or consultant accountants must examine and report on the accounting policies and calculations of forecasts. Financial advisers mentioned in the document must also report on the forecasts.
- **(c)** If income from land and buildings is significant in a forecast, an independent valuer should examine and report on this part, unless when the income is virtually certain for example receivable rents.
- (d) Profit forecasts made before the offer period must be examined, repeated, and reported on in documents sent to shareholders, unless the Executive consents otherwise.
- **(e)** The Executive may allow exceptions to report on a forecast previous made if uncertainties prevent compliance with the Takeovers Code. The Executive will require a full explanation on this to shareholders.

10.4 Publication of reports and consent letters

When a profit forecast is made during an offer period, the reports must be included in the shareholder document containing the forecast. The announcement containing the forecast (if applicable) must state that the forecast has been reported in accordance with the Takeovers Code and lodged with the Executive. If the forecast is initially published in an announcement, the forecast and reports must be repeated in the next shareholder document, with a statement of consent to publication from the entities making the reports.

10.5 Subsequent documents – continuing validity of forecast

Any documents related to the offer that are subsequent to the document containing the forecast must include a statement from the directors affirming the forecast's validity, unless the Executive consents otherwise. Relevant financial advisers and accountants must indicate no objection to their reports continuing to apply.

10.6 Statements that will constitute a profit forecast:

- (a) even without specific figures or the word "profit," certain phrases may be considered a profit forecast depending on the context, for example statements that sets a minimum or maximum level of profits in a given period, or provides sufficient data to derive an approximate profit figure, will be classified as a profit forecast by the regulatory Executive. Professional advisors shall consult the Executive where necessary;
- **(b)** estimates of profit for a completed period;
- (c) profit forecasts for a limited period;
- (d) dividend forecasts are not generally profit forecasts unless accompanied by an estimate of dividend cover;
- (e) profit warranties (the Executive should be consulted on profit warranties beforehand).

10.7 Taxation, items which are exceptional because of size, nature and incidence and net profit or loss attributable to minority interests

Any document addressed to shareholders containing a profit forecast before taxation must also include forecasts of taxation, exceptional items due to size, nature, or incidence, and net profit or loss attributable to minority interests.

10.8 When a forecasts to a period which has commenced

If a profit forecast relates to a period that has already commenced, any previously published profit figures for the expired part of that period, along with comparable figures from the same part of the previous year, must be included.

10.9 Interim and preliminary figures

Unaudited profit figures published during an offer period must be reported on, except with the Executive's consent. Exceptions to this rule include:

- (a) unaudited annual or interim results that are already published;
- **(b)** unaudited annual results complying with preliminary profits statements requirements under the Listing Rules;

- (c) unaudited interim results complying with half-yearly report requirements under the Listing Rules, provided that the offeree company's board has not advised against accepting an offer; or
- (d) unaudited interim results by offerors complying with half-yearly report requirements under the Listing Rules, provided that the offer does not result in issuing securities representing 10% or more of the enlarged voting share capital of the offeror.

Companies not listed on the Stock Exchange should consult the Executive if they wish to use the exemptions under Rule 10.9.

Note to Rule 10.9

Growth Enterprise Market companies

For companies listed on the Growth Enterprise Market of the Stock Exchange, references to interim results include quarterly results.

10.10 Merger benefits statements in securities exchange offers

For securities exchange offers, quantified statements about expected financial benefits will be treated as profit forecast statements. Additional to the requirements under Rules 9 and 10, issuers of such statements must provide the basis of their belief with information sources, an analysis and explanation of constituent elements, and a base figure for comparisons. Statements suggesting earnings per share enhancement that depends wholly or partially on material merger benefits must include a disclaimer if not intended to be profit forecasts to clarify that statement does not indicate that the earnings per shall will be larger than the relevant preceding financial period. Unquantified earnings enhancement statements, when combined with merger benefits or other financial information, may provide actual or indicative information about the prospective profits for the offeror and may constitute profit forecasts. Parties uncertain about the implications of their statements should consult the Executive.

Note to Rule 10.10

Statements that will be treated as profit forecasts

Quantified merger benefits or earnings enhancements are treated as profit forecasts, while general statements without specific floor or ceiling for profit figures are not. The considerations under Rule 10.6 will also be applied to determine whether the statements constitute profit forecasts.

10.11 Material changes in financial or trading position

Disclosure of material changes in financial or trading positions or offeree/ offeror company outlook in shareholder documents provided after the latest published audited accounts in accordance with Schedule I and II or Schedule III (for share buy-back by general offer or off-market share buy-back) that are profit forecasts must be reported in accordance with Rule 10. Directors of the company must provide evidence to the Executive

of the steps taken to support any statement in the document asserting no material changes, except as disclosed.

Note to Rule 10.11

Evidence of steps taken

Under Rule 10.11, evidence typically includes a written confirmation from the board of the offeror or offeree company to the Executive. The confirmation should state that the board and the financial adviser have reviewed the company's financial position, including management accounts, financial condition, capital and other commitments, contingent liabilities, future cash flow, and financing needs, as well as the trading position with suppliers and customers. The confirmation should also confirm that the board and the financial adviser have discussed these aspects before making the confirmation. As per Rule 9.3Directors of the offeror or offeree company are fully responsible for statements made under Rule 10.11. Any material difference of opinion between the directors and the financial adviser on material changes or its absence must be disclosed to the Executive. The Executive may require disclosure of such information in the document if deemed relevant to a shareholder's decision on an offer.

Rule 11 -Asset valuations

Summary of the key points:

Rule 11 sets out the requirements on asset valuations. Valuations must be disclosed in offer documents and supported by an independent valuer's opinion. Rule 11 applies to both tangible and intangible assets, including land, buildings, machinery, and securities. For securities listed on the Stock Exchange, a separate valuation is not needed if it is done by a qualified accountant or financial adviser. Valuations based on discounted cash flows or profit projections require consultation with the Executive and will be treated as profit forecasts. Valuers for land and buildings should be members of The Hong Kong Institute of Surveyors or other persons approved by the Executive. For other assets, the valuer is typically the financial adviser, but the Executive may accept valuations by other qualified professionals.

Asset valuations must not be selective unless justified by special circumstances and approved by the Executive. Significant property interests require property valuations if the offeror is an interested party and the Rule provides more guidance on the factors to demine whether there are significant property interests". Valuations must clearly state the basis and assumptions, with special attention to the Valuation Standards for land and buildings. Valuations should include potential tax liabilities and be current, with the effective date and valuer's qualifications stated. Valuation reports must be available for inspection, and the valuer's consent for publication must be obtained. In exceptional cases, the Executive may waive strict compliance with valuation requirements if it serves shareholders' interests. An independent valuer must have no material connection with other transaction parties and meet Listing Rules requirements.

All references in this Rule to "the Valuation Standards" are to "The HKIS Valuation Standards on Properties" published by The Hong Kong Institute of Surveyors.

11.1 Disclosure of valuations

Details or a Summary of valuations must be disclosed in offer documents, offeree board circulars, or other relevant documents and supported by a named independent valuer's opinion.

(a) Type of asset

The rule applies to both tangible and intangible assets, including land, buildings, process plant and machinery, and securities. For securities listed on the Stock Exchange and not suspended from trading, a separate valuation and consent letter is unnecessary if the valuation is conducted by a qualified accountant or financial adviser. For securities listed on other exchanges, consultation with the Executive is required. Valuations (except for valuation on land and buildings) based on discounted cash flows or profit projections require consultation with the Executive and are generally treated as profit forecasts under

Rule 10. Waivers to comply with Rule 10 for such valuations are granted only in exceptional circumstances or when cash flow predictability is assured.

(b) The valuer

Valuers for land and buildings should be professional members of The Hong Kong Institute of Surveyors or otherwise approved by the Executive. For other assets, the valuer is typically the financial adviser to the relevant party, but the Executive may accept valuations from other qualified and experienced professionals which is reported on by the financial adviser. The valuer must demonstrate to the Executive due compliance with legal or regulatory requirements and possess sufficient local and international market knowledge and skills for competent valuation.

(c) In connection with an offer

Offer documents may include asset value estimates from directors with the company's accounts in accordance with the Listing Rules, the Companies Ordinance (Chapter 622 of the Laws of Hong Kong)(the "Companies Ordinance") or other applicable statutory requirements. These asset value estimates are not considered "given in connection with an offer" unless they are a significant factor in assessing the offer and are prominently featured in the offer documents. In such cases, estimates must be supported by an independent valuer as per Rule 11.

(d) Another party's assets

A party involved in a takeover cannot issue a valuation, appraisal or calculation of asset worth of another party's assets without an unqualified opinion from a named independent valuer who has had sufficient information access to carry out the valuation according to the Valuation Standards or other standards approved by the Executive regarding assets other than land and buildings. Comments on another party's asset valuation are generally not allowed, and the Executive must be consulted in advance.

(e) Selection valuation not acceptable

Selective asset valuations are not acceptable unless special circumstances justify them, subject to Executive approval.

(f) Companies with significant property interests when the offeror is an interested party

When the offeror is an interested party, a valuation of properties of the offeree company and the offeror in a securities exchange offer if they have significant property interest, unless the Executive consents otherwise. An "interested party" under this Rule 11.1(f) is defined as a party who, together with its concert parties, hold 30% or more of the voting rights of the offeree company, a director of the offeree company, or a party acting in concert with the abovementioned parties. A company is considered to have "significant property interests" if the book value of its consolidated property assets exceeds 15% of its consolidated total assets. If consolidated property assets are less than 50% of the company's consolidated total assets, a valuation of property assets held by associated

companies is typically not required. If a company's consolidated property assets constitute 50% or more of the book value of its total consolidated assets, a valuation of property assets held by associated companies, where the company has a significant degree of control, is required. A significant degree of control is defined as holding 30% or more of the voting rights directly or indirectly.

(g) Companies with property situated in developing property markets

For companies with valuations of property in developing markets, consultation with the Executive is necessary to determine the applicability of Practice Note 12 to the Listing Rules.

11.2 Basis of valuation

- (a) The basis of any asset or business valuation must be clearly stated, with qualifications only in exceptional circumstances, which must be explained by the valuer. Material assumptions in valuations must be disclosed, observing the principles in Notes to Rules 10.1 and 10.2;
- **(b)** Valuations of land and buildings should follow the Valuation Standards, with special assumptions (VS2.3 of the Valuation Standards) fully explained if the Executive permits including these assumptions;
- (c) Non-specialised properties are typically valued at market value as per the Valuation Standards, while properties used for business purposes are valued at existing use value. Properties adapted for the requirements of a specific business may have their market value assessed post-adaptation or the pre-adaption property and the adaptation works valued separately on a depreciated replacement cost basis. Specialised properties used by the business should be valued on a depreciated replacement cost basis, considering potential profitability. Investment properties or those surplus to requirements that are pending disposal should be valued at market value.
- (d) For land under development or with immediate development potential, valuations should include the open market value at the valuation date, post-development value, estimated total development costs with carrying charges, and anticipated completion and letting or occupation dates. A statement must also be provided regarding whether planning or other regulatory consent has been obtained, including the date and any conditions affecting the assets value.

11.3 Potential tax liability

Valuations should include a statement on potential tax liabilities if assets were sold at the valuation amount, with comments on the likelihood of such liabilities crystalising.

11.4 Current valuation

The valuation must specify the effective date of the valuation and the valuer's professional qualifications and address. If the valuation is not current, the valuer must confirm that a current valuation would not differ materially, or the valuation must be updated.

Note to Rule 11.4

Effective date

The Executive considers valuations over 3 months old as not current.

11.5 Opinion and consent letters

(a) Standard of care

Valuations must be conducted with due care and accuracy, maintaining high standards in communications to shareholders.

(b) Publication of opinion

The opinion of value must be included in the valuation document, with the document containing property valuations summarising each property's valuation and address to identify the property.

(c) Consent

The valuer must provide written consent for the publication of the valuation report, which must not be withdrawn.

(d) Valuation certificate to be on display

Full valuation reports must be available for inspection in the way as set out under Note 1 to Rule 8 and together with the associated report or schedule setting out details aggregate valuation. A summary in the report or schedule rather than full details may be allowed where the Executive is satisfied that full disclosure could be commercially disadvantageous to the company.

11.6 Waiver in certain circumstances

In exceptional circumstances, particularly for property companies facing unexpected offers, the Executive may waive the requirement for an independent valuer's opinion for an asset valuation if it is difficult to obtain within the available time before the offeree board circular is issued. Such waivers are considered when after balancing the factors, informal valuations, supported by available substantiation, best serve shareholders' interests. Advisers to offeree companies should consult the Executive as early as possible if they wish to pursue this waiver procedure.

Note to Rule 11

Independent valuer

An "independent valuer" under Rule 11 is defined as one who meets the requirements in Appendix 1.1 of the Valuation Standards, has no material connection with other transaction parties and complies with the requirements under the Listing Rules.

Rule 12 -Issuance of documents

Summary of the key points:

Rule 12 focuses on the issuance and publication of documents related to listed and unlisted companies. It mandates that all documents, except those exempted under the Post-vet list, must be submitted to the Executive for comments before publication. These exempt documents must still be filed with the Executive immediately after publication. The Executive may request drafts of any document for comment if deemed necessary, even if they are typically exempt. Documents for listed companies must comply with the Listing Rules, while those for unlisted companies must be submitted electronically for publication on the SFC's website. Advertisements during an offer period are generally prohibited unless they fall into specific categories, such as product advertisements unrelated to an offer, corporate image advertisements, or those required by the Stock Exchange.

The Executive's role in the commenting process is advisory, and it is the responsibility of the document issuer and their advisers to ensure compliance with the Codes. Issuers must confirm publication details and any that there are no material changes to the document after the Executive's comments, where there are changes, a marked-up version must be submitted.

Directors must confirm the accuracy of translations between English and Chinese versions, with confirmations submitted by 5:00 p.m. the next business day after publication. The responsibility for accurate translations lies with the directors of the issuing party, and providing confirmation on the accuracy does not absolve them of this responsibility.

12.1 Filling of documents for comments

All documents, except those exempted, must be submitted to the Executive for comments before publication. They cannot be released until the Executive confirms no further comments. Documents should be submitted electronically unless otherwise directed by the Executive.

Note to Rule 12.1

The Executive will periodically publish a list of documents exempt from Rule 12.1 on the SFC's website (known as the "Post-vet List"). Exempt documents must still be filed with the Executive immediately after publication.

Notwithstanding the exemption, the Executive retains the right to request drafts of any relevant document for comment if deemed necessary.

12.2 Publication of documents

Documents concerning listed companies must comply with the Listing Rules for publication. Documents for unlisted companies must be delivered electronically to the Executive for publication on the SFC's website.

12.3 Advertisements

Advertisements during an offer period are generally prohibited unless they fall into specific categories, such as product advertisements unrelated to an offer or possible offer, corporate image advertisements unrelated to an offer or possible offer, advertisements required or permitted by the Stock Exchange, or advertisements containing information relevant to holders of bearer securities. All advertisements, except those under the first category above, must be filed with the Executive as per Rule 12.1.

Notes to Rule 12

1. Adequate time

Adequate time should be provided to the Executive for document review, and the first draft should be in an advanced form with points of difficult highlighted to the Executive as early as possible. If a substantial draft is not submitted to the Executive for comment by 5:00 p.m., the Executive may not be able to provide comments on the same day, especially with unresolved or complex issues.

2. The Executive's role in the commenting process

The Executive's role in the commenting process is consultative, assisting in resolving Code issues but the issuer of the document is still responsible to ensure compliance with the Codes. The responsibility for compliance lies with the document issuer, its directors, and advisers.

Parties and advisers must exercise due diligence to ensure all disclosures required under the Codes are made in the first draft submitted for comment.

The Executive's lack of further comment does not confirm full compliance with the Codes. The Executive is also not responsible for verifying the accuracy of the document. If inaccuracies or omissions are later found, the Executive may require corrections and consider disciplinary actions. Consultation with the Executive should occur early if there is uncertainty about a document's qualification for post-vetting.

3. Source

Each document must clearly identify the party on whose behalf it is published.

4. Confirmation of publication and no material change

After publication, the issuer or its advisers must confirm in writing to the Executive that the document has been published, noting the time and date, and that there have been no material changes from the version reviewed by the Executive, unless it is on the Post-vet

List. This confirmation should include both English and Chinese versions of the published document and a marked-up version showing any changes made after the Executive's review.

5. Confirmation of translation

Following the publication of any document, the directors of the issuer must confirm that the Chinese version is a true and accurate translation of the English version, or vice versa and that the 2 version are consistent. This confirmation must be provided in a form prescribed by the Executive and submitted to the Executive as soon as possible and no later than 5:00 p.m. on the business day following the document's publication date. The confirmation must be signed by a director on behalf of the board of directors of the issuing party. If the document is jointly issued, each issuing party must provide a confirmation.

Under Rules 8.6 and 9.3, the responsibility for ensuring the accuracy of the translation lies with the directors of the issuing party. Providing the confirmation of translation to the Executive does not absolve the directors of their responsibility for the translation's accuracy.

Rule 13 -Appropriate offers for convertibles, warrants, etc.

Summary of the key points:

Rule 13 sets out the requirements for making offers to holders of convertible securities, warrants, options, and subscription rights when an offer is made for the equity share capital of an offeree company that has these rights. It mandates that the offeror must ensure the interests of these security holders are safeguarded by making an appropriate offer or proposal, ensuring equality of treatment within a class of security holders. The board of the offeree company is required to obtain competent independent advice on the offer or proposal and communicate this advice, along with the board's views, to all security holders. The offer or proposal should be dispatched to relevant security holders simultaneously with the offer document to shareholders, or as soon as possible thereafter if simultaneous dispatch is impractical. These offers must be conditional on the equity share capital offer becoming unconditional and should not generally be subject to other conditions, though they may be presented as a scheme for consideration by security holders. The consideration for these offers should typically be based on the offer price for the equity share capital which will generally be regarded as the minimum offer price, with any deviation requiring consultation with the Executive. This Rule also emphasises that equality of treatment refers to treatment within a class of security holders and notes that relevant documents should be issued to holders of convertible securities and options simultaneously with shareholders, highlighting their rights during the offer period.

13.1 Offeree companies with convertible securities

For offers for convertible securities, warrants, and options when an offer is made for equity share capital. If the offeree company has convertible securities, the offeror must make an appropriate offer to the holders of these securities to ensure their interests are protected and treated equally.

13.2 Competent independent advice

The board of the offeree company is required to obtain competent independent advice in writing regarding the offer or proposal for these securities. This advice, along with the board's views, must be communicated to all relevant security holders as per Rule 2.1.

13.3 Despatch of appropriate offers

Offers or proposals should ideally be sent to relevant security holders simultaneously with the publication of offer document to shareholders. If this is not feasible, the Executive should be consulted, and the offer or proposal should be dispatched as soon as possible.

13.4 Conditions of appropriate offers

The offer or proposal must be conditional on the equity share capital offer becoming or being declared unconditional and should not generally have other conditions, though it may be presented as a scheme for consideration at a meeting of relevant security holders.

13.5 Warrants, options and subscription rights

The provisions of Rule 13 also apply to warrants, options, and subscription rights related to any class of equity share capital, including non-transferable options.

Notes to Rule 13

1. Consideration for appropriate offers

The consideration for offers related to convertible securities, warrants, options, or subscription rights should typically be based on the offer price for the relevant equity share capital, with this "see-through" price being regarded as the minimum offer price. If the offeror deems that a different basis is more appropriate, the Executive should be consulted beforehand. A higher offer is not appropriate if it is part of a special deal to incentivise acceptance from those also holding shares or other securities of the offeree company.

2. Equality of treatment

"Equality of treatment" under Rule 13.1 means equal treatment within a class of security holders, rather than between different classes of securities.

3. When conversion right etc. are exercisable during an offer

All documents relevant to the offer issued to shareholders of the offeree company should also be issued simultaneously to holders of securities that are convertible into, or have rights to subscribe for, or options over shares of the same class as those to which the offer pertains, where practicable. If holders of such securities can exercise their rights during the offer and accept the offer for the resulting shares, this should be clearly highlighted in the documents provided to them.

Rule 14 - Offers for more than one class of equity shares

Summary of the key points:

Rule 14 mandates that when a company has multiple classes of equity share capital, a comparable offer must be made for each class, regardless of whether it carries voting rights. The Executive must be consulted in all cases involving multiple classes of equity shares.

Comparable offers for each class should generally be subject to similar conditions, but they can be structured as schemes to be considered separately for each class. To achieve comparability, an offeror may need to pay a higher price for a class of shares than the highest price paid in the 6 months preceding the offer period. The offer does not need to be identical but all differences must be justifiable to the Executive, considering the rights and historical market prices of each class. If an offer is made solely for non-voting equity shares, comparable offers for voting classes are not required. Offers for different classes of equity share capital must be interconditional, meaning an offer for one class is contingent on the offers for other classes becoming or being declared unconditional.

When a company has multiple classes of equity share capital, a comparable offer must be made for each class, regardless of voting rights. Consultation with the Executive is required in all cases involving offers for more than one class of equity shares.

Comparable offers under this Rule should generally be subject to similar conditions, but they can be structured as a scheme to be considered in separate meetings for each class of equity share capital.

Notes to Rule 14

Comparable offers

To achieve comparability, the price to be paid by an offeror for a particular class of shares may need to be higher than the highest price paid within 6 months before the offer period. The offer does not need to be identical but differences must be justifiable to the Executive, considering the rights and historical market prices of each class.

2. Offer for non-voting equity shares only

If an offer is made only for non-voting equity shares, comparable offers for voting classes are not required.

3. Offers must be interconditional

Offers for one class of equity share capital must be contingent on the offers for other equity share capital classes becoming or being declared unconditional.

Rule 15 -Timing of the offer

Summary of the key points:

Rule 15 sets out the requirements on the timing of offers in mergers and acquisitions. Offers must be open for acceptance for at least 21 days if the offer document and offeree board circular are posted simultaneously, or 28 days if the circular is posted later. The latest time for acceptance is 4.00 p.m. on the closing day unless it is extended per Rule 19.1. If an offer is extended, the next closing date must be stated, or a statement that the offer remains open until further notice must be made, with at least 14 days' notice before closing. Offers that close without becoming unconditional are considered lapsed. There is no obligation to extend offers if conditions are unmet by the closing date. Conditional offers that become unconditional must remain open for at least 14 days, with written notice given before closing.

Announcements are required when offers become unconditional as to acceptances or in all respects. The offeree company should not announce new material information after the 39th day after the offer document is posted without the Executive's consent. The final day rule states that offers cannot become unconditional after 7.00 p.m. on the 60th day after the offer document is posted, except with Executive consent in specific situations. Where there are competing offers, both offerors should follow the timetable of the competing offer document, and the Executive may extend deadlines. Offers requiring regulatory approval must outline the expected timetable in the offer document, and delays should be communicated to the Executive. For offers with compulsory acquisition intentions cannot remain open beyond 4 months unless the offeror is entitled to exercise the powers of compulsory acquisition and must do so promptly.

All conditions must be fulfilled or the offer must lapse no later than 21 days after the first closing date or when the offer becomes unconditional as to acceptances, whichever is later. Acceptances or purchases can only be taken into account if they are made in accordance with the Notes to Rule 30.2 before the last acceptance time which is no later than 4.00 p.m. on the closing date.

15.1 Closing dates

Offers must remain open for acceptance for at least 21 days from the date of the offer document if the offer document and offeree board circular are posted simultaneously or in a composite document. If the offeree board circular is posted after the offer document, the offer must be open for at least 28 days from the date of the offer document. The latest time for acceptance is 4:00 p.m. on the closing day unless extended per Rule 19.1.

Any offer extension announcement must either state the next closing date or if the offer is unconditional as to acceptances, indicate that the offer will remain open until further

notice with at least 14 days' written notice before the offer closes sent to shareholders who have not accepted the offer and published by way of an announcement.

An offer lapses if it closes without becoming unconditional.

15.2 No obligation to extend

There is no obligation to extend an offer if its conditions are not fulfilled by the closing date.

15.3 Offer to remain open for 14 days after unconditional

A conditional offer that becomes or is declared unconditional must remain open for at least 14 days, with 14 days' written notice given to shareholders who have not accepted the offer before closing.

Note to Rule 15.3

Announcements are required when an offer becomes unconditional as to acceptances or in all respects.

15.4 Offeree company announcement after "Day 39"

The offeree company should not announce new material information after the 39th day after the date of the initial offer document without the Executive's consent. If new information arises after the 39th day, efforts should be made to announce it earlier, but the Executive may consent to a later announcement. If an announcement is allowed under this Rule, the Executive will generally grant extensions to the "Day 46" rule under Rule 16.1 and/or the "Day 60" rule under Rule 15.5.

15.5 Final day rule

Rule 15.5, known as the "Final day rule", states that an offer cannot become or be declared unconditional as to acceptances after 7:00 p.m. on the 60th day following the initial offer document, unless the Executive consents. The Executive's consent for extending the final day is typically granted under specific situations: (i) competitive situations, (ii) with the offeree board's consent, (iii) as per Rule 15.4, or (iv) if requested by the offeror's receiving agent for compliance with Note 2 to Rule 30.2.

For extensions other than under situations (i) to (iii) above, documents for acceptances or purchases received after 4:00 p.m. on the closing date may only be considered with the Executive's consent, which is given only in exceptional circumstances. "Day 60" cannot be extended beyond 4 months from the initial offer document date.

Notes to Rule 15.5

1. Schemes of arrangement

Parties should consult the Executive if a modified timetable is needed in cases of schemes of arrangement to accommodate the Court timetable.

2. Competitive situations

Whether there is an announced competing offer, both offerors are bound by the timetable in the competing offer document. The Executive may extend "Day 60" for procedures under Rule 16.5, but consent under situation (ii) above in competitive situations is typically not granted unless it is sought before the 46th day after the competing offer document.

3. Regulatory approvals

The expected timetable for regulatory approvals should be included in the offer document where applicable. Delays in the approval process should be promptly communicated to the Executive, who may provide guidance in appropriate cases. The Executive may extend the "Day 39" to the second day after the announcement of obtaining the approval, "Day 46" and "Day 60" will also be changed accordingly.

15.6 Compulsory acquisition

If an offeror announced in the offer document that it intends to use powers of compulsory acquisition, the offer cannot remain open for more than 4 months from the offer document date unless the offeror is entitled to exercise these powers by that time, in which case it must do so promptly.

15.7 Time for fulfillment of all other conditions

All conditions of an offer must be fulfilled, or else the offer must lapse no later than 21 days after the first closing date or the date the offer becomes or is declared unconditional as to acceptances, whichever is later, unless the Executive consents otherwise.

Note to Rule 15.7

Scheme of arrangement

In schemes of arrangement, no Executive consent is needed if the timing is affected by the Court's timetable, which is beyond the offeror's control.

15.8 Acceptances and purchase to be taken into account

With respect to the acceptance condition, the offeror can only consider acceptances or share purchases made in accordance with the Notes to Rule 30.2 below before the last acceptance time specified in the offeror's document or announcement, which must be no later than 4:00 p.m. on the closing date.

Rule 16 -Revised and alternative offers

Summary of the key points:

Rule 16 focuses on the procedures and requirements for revised and alternative offers. It mandates that any revised offer must remain open for at least 14 days, ensuring all shareholders have the opportunity to consider the new terms. The rule prohibits posting a revised offer document within the 14 days leading up to the day the offer is able to become unconditional as to acceptances. It also addresses the impact of announcements that could increase an offer's value, requiring consultation with the Executive if such announcements are necessary during the offer period. The Rule specifies conditions under which an offeror must revise its offer, such as purchasing securities above the offer price or being obligated to make a cash offer under certain rules. It restricts revisions in the final 14 days of the offer period and outlines exceptions for mandatory offers under Rule 26.

Additionally, Rule 16 allows for new conditions to be attached to a revised offer, subject to Executive approval. Rule 16 also clarified that provisions under Rules 15, 16, 18 and 20 apply to alternative offers including cash alternatives and covered requirements on the handling of elections and the closing of alternative offers, emphasising that once an offer is declared unconditional as to acceptances, alternative offers must remain open as per Rule 15.3. The Rule also covers the reintroduction of alternative offers, stating that if a firm statement against reintroduction has been made, it cannot be extended or reintroduced. In competitive situations, the Executive may require revised offers to follow an auction procedure, with final revisions announced by the 46th day after the competing offer document. The Executive may grant dispensation from posting a lower revised offer if the offeree company's board consents and may impose a final time limit for announcing revisions to competing offers.

16.1 Offers open for 14 days after revision

If an offeror revises the terms of an offer, all shareholders of the offeree company are entitled to the revised terms, regardless of any prior acceptance. A revised offer must remain open for at least 14 days after the revised offer document is issued. Revised offer documents cannot be posted within the 14 days leading up to the last day the offer can become unconditional regarding acceptances.

Notes to Rule 16.1

1. Announcements which may increase the value of an offer

For equity or potential equity exchange offers, announcements that may increase the offer's value, such as, inter alia, I knew material information on trading results, profit forecasts, proposal for capital reorganisation, or material acquisition or disposal, are generally not allowed after the offeror is precluded from revising the offer. If such announcements are

necessary during the offer period, the offeror must consult the Executive at the earliest opportunity and a "no increase" statement under Rule 18.3 will not be allowed before publishing the announcement.

The Executive will apply tests similar to those for "major transactions" under the Listing Rules to determine if a transaction is a "material acquisition or disposal".

"Capital reorganisation" under this Note includes rights issues, capital distributions, and special dividends, dividends in specie that are not scrip dividends of the same class, but excludes stock splits, stock consolidations, bonus issues of the same class, ordinary dividends not exceeding earnings per share and nominal share capital and share premium reductions without distribution to shareholders.

Offerors should make every effort to make necessary announcements before the restrictions apply, especially when they are aware of an event that may necessitate an announcement. If this is not possible, the offerors should consult the Executive in advance. The Executive may seek input from the Stock Exchange or other regulators to confirm the necessity of an announcement.

2. When revision is required

An offeror is typically required to revise its offer if it or any person acting in concert with it purchases securities above the offer price, or if it becomes necessary to introduce an offer under Rule 23, make a cash offer or increase an existing cash offer under Rule 26.

3. When revision is not permitted

An offeror cannot and must not put itself in a position where it is required to revise its offer in the 14 days leading up to the last day the offer can become unconditional, nor can it place itself in a position requiring revision if a no increase statement has been made as per Rule 18.3.

4. Triggering a mandatory offer under Rule 26

If an offeror making a voluntary offer in cash or with a cash alternative acquires securities necessitating a mandatory offer under Rule 26 at no higher price than the existing cash offer, this change in the nature of the offer is not considered a revision, even if outstanding conditions must be waived. However, the offer must remain open for 14 days after the revised offer document is issued.

16.2 New conditions for increase or improved offers

New conditions can be introduced to a revised offer only if they are necessary for its implementation and with the Executive's consent.

16.3 Timing and revision

Rules 15, 16, 18, and 20 apply equally to alternative offers, including cash alternatives.

Notes to Rule 16.3

1. Elections

For Rule 16.3, allowing shareholders to elect to vary the proportion of different forms of consideration are not considered alternative offers and can be closed without notice on the closing date, noting that this must be clearly stated in the offer document.

2. Shutting off

If an offer becomes or is declared unconditional as to acceptances, all open alternative offers at the time must remain open according to Rule 15.3.

If an offer is not unconditional as to acceptances on a closing date, an alternative offer (excluding a cash alternative under the Rule 26 requirements) may be closed without prior notice. On the first closing date when an offer could be declared unconditional, if it is not declared and is extended, all alternative offers must remain open for 14 days but can then be closed without notice.

16.4 Reintroduction of alternative offers

If the offeror has made a firm statement that an alternative offer will not be extended or reintroduced, that alternative or any substantially similar alternative cannot be extended or reintroduced. If no such statement is made, an offeror may reintroduce a closed alternative offer, which is considered a revision and must comply with Rule 16.

16.5 Competitive situations

In competitive situations at a late stage of the offer period, the Executive may require revised offers to follow an auction procedure with terms determined by the Executive, which typically requires revisions to the competition offers to be announced by the 46th day after the competing offer document date. The Executive may allow an offeror to revise its offer in response to a competing offeror's revision on or after the 46th day. Revised offers typically do not need to be posted before a set period expires after the last revision. The Executive may approve an alternative procedure if agreed upon by competing offerors and the offeree company's board.

Notes to Rule 16.5

1. Dispensation from obligation to post

The Executive may waive the requirement to post a revised offer lower than a competing offeror's final revised offer if the offeree company's board consents.

2. Guillotine

The Executive may impose a final time limit for announcing revisions to competing offers under the procedure in accordance with Rule 16.5, considering the offeree company's board's input, previous revisions, and the procedure's duration.

Rule 17 – Acceptor's right to withdraw

Summary of the key points:

Rule 17 specifies that an acceptor can withdraw their acceptance if the offer has not become unconditional as to acceptances within 21 days from the first closing date. This right remains until the offer becomes or is declared unconditional. On the 60th day, or any date beyond which the offeror has stated the offer will not be extended, the final time for withdrawal must align with the final time for lodging acceptances as per Rule 15.5, and this must not be later than 4:00 p.m. The offeror is required to return the share certificates to or make them available for collection by the shareholders who have withdrawn their acceptance within 7 business days of receiving the withdrawal notice.

An acceptor can withdraw their acceptance within 21 days from the first closing date of the offer if the offer has not become unconditional as to acceptances. The right to withdraw remains until the offer becomes or is declared unconditional as to acceptances. On the 60th day, or any date beyond which the offeror has stated the offer will not be extended, the final time for withdrawal must align with the final time for lodgement of acceptances as per Rule 15.5, and must not be later than 4.00 p.m.

The offeror is required to return the share certificates lodged with acceptance forms to the shareholders who have withdrawn, within 7 business days of receiving the notice of withdrawal.

Rule 18 – Statements during course of offer

Summary of the key points:

Rule 18 emphasises the importance of not issuing misleading statements that could create uncertainty among shareholders and the market. Specifically, it prohibits offerors from making statements about potential improvements to their offers without committing to such improvements. Notes to Rule 18.1 clarify that holding statements must be clarified within a limited time, especially in later stages of the offer period, and the Executive must be consulted. Statements of support from the offeree company's board about shareholder support must be verified and confirmed to the Executive.

The Rule also addresses "no extension" and "no increase" statements, which restrict the offeror from extending or increasing the offer unless specific conditions are met or rights are reserved. These statements must be clear and, if incorrect, withdrawn immediately. The document further details the conditions under which these statements can be set aside, such as in competitive situations or when the statement prevents the offeree company's board from posting an increased or improved offer or under wholly exceptional circumstances. It also mandates that any reservations to set aside these statements must be clearly stated and referenced in all related documents. If permitted by the Executive, Rule 15.4 announcements allow an offeror to revise its offer provided that the offeree company must notify the shareholders promptly.

18.1 No misleading statements

Parties to an offer, including their advisers, must avoid issuing statements that, while factually accurate, could mislead shareholders or the market or create uncertainty. Offerors must not suggest that they may improve an offer without committing to it and specifying the improvement.

Notes to Rule 18.1

1. Holding statements

Holding statements, which indicate an offeror is considering its position or a potential competing offeror is considering making an offer, must be clarified within a limited time, especially in the later stages of the offer period. The Executive must be consulted on the allowable period for clarification before holding statements are made.

2. Statements of support

Statements of support from the board of the offeree company regarding shareholder support must be based on clearly stated intentions and verified to the Executive's satisfaction, for example immediate confirmation from relevant shareholders.

18.2 No extension statements

"No extension statements" in documents to offeree company shareholders or made on behalf of an offer, its directors, officials or advisers regarding the duration of an offer must be withdrawn immediately if they are incorrect. The offeror can only extend the offer beyond the stated date under exceptional circumstances, unless the right to do so was specifically reserved.

18.3 No increase statements

"No increase statements" in documents to offeree company shareholders or made on behalf of an offer, its directors, officials or advisers about the value or type of consideration must also be withdrawn immediately if they are incorrect. Amendments to the offer terms are only allowed in exceptional circumstances (even if the amendment does not increase the value of the offer), unless the right to amend was specifically reserved.

Notes to Rule 18

1. Firm Statements

Offerors are bound by firm statements regarding the duration or finality of their offers. Misleading expressions such as "present intention" should not be used. Statements of intention are treated as firm statements, and terms that indicate finality are considered absolute unless exceptions are clearly stated. Similar expressions will be treated in the same way and meaning of the statement will not be distinguished by the precise words chosen.

2. Competitive situations

Subject to Note 4 to Rule 18, in competitive situations, an offeror may chose not be bound by a "no extension" or "no increase" statement if a competing offer arises. This requires an announcement within 4 business days of announcement of the competing offer, a circular to shareholders, and all shareholders who have accepted the offer after the date date of the no extension or no increase statement are given an eight-day withdrawal period after the date of the circular.

3. Recommendations

Subject to Note 4 to Rule 18, offerors may chose not be bound by such statements to allow for the posting of an increased or improved offer recommended by the board of the offeree company.

4. Reservation of right to set statements aside

A "no extension" or "no increase" statement can only be set aside if the offeror reserved this right when the statement was made, regardless of the offeree board's recommendation of the offer. This reservation must be prominently mentioned in the initial document and applicable references in subsequent documents mentioning the statement. Reservations, other than those under Note 2 and 3 above, must not rely solely on subjective judgments by the offeror or its directors or the fulfilment of which is in their hands. If the right to set aside

the statement was not reserved, the offeror is bound by it, except in wholly exceptional circumstances. This restriction applies even if the offeree company's board recommends the offer or if the offer is unconditional in all respects. An exception to this rule is the 14-day extension allowed under Rule 15.3.

5. Rule 15.4 announcements

Subject to Note 4 above, Rule 15.4 allows for certain announcements by the offeree company after the 39th day and after a "no increase" statement has been made. In such cases, the offeror may choose not to be bound by the "no increase" statement. The offeror can revise its offer if permitted by the Executive under Rule 15.4, provided that notice is given as soon as possible, and no later than 4 business days after the offeree company's announcement. Shareholders must be informed about this in writing at the earliest opportunity.

Rule 19 -Announcement of results of offer

Summary of the key points:

Rule 19 governs the announcement of results for offers in the context of securities transactions. By 6:00 p.m. on the closing date of an offer, the offeror must inform the Executive and the Stock Exchange about the status of the offer, including any revisions, extensions, expirations, or declarations of unconditionality. An announcement must be published by 7:00 p.m. detailing whether the offer has been revised, extended, expired, or declared unconditional, and must include the total number of shares and rights over shares that are accepted, held, or acquired by the offeror and any persons acting in concert with it. The announcement must also disclose any relevant securities borrowed or lent by the offeror or its concert parties, and specify the percentages of share capital and voting rights these numbers represent. In cases of schemes of arrangement, similar announcements are required on the date of any shareholder meeting to approve the scheme.

Failure to comply with these requirements necessitates consultation with the Executive, who may allow acceptors a right of withdrawal until compliance is achieved. Additional notes to Rule 19 emphasise the need for prompt communication of the offer status to the offeree company and any competing offerors, the requirement for immediate announcements if statements about acceptances are made, and the necessity of consulting the Executive before announcing withdrawals of acceptance. The rule also specifies that incomplete acceptances and purchases should only be included in totals if they can be counted to fulfil acceptance conditions. The announcement must also state the extent of acceptances from persons acting in concert with the offeror. Disclosures are also required for acceptances of cash alternatives, and for partial offers or share buy-backs.

19.1 Nature of announcement

The offeror must inform the Executive and the Stock Exchange of any decision regarding the offer's revision, extension, expiry, or unconditionality of the offer by 6:00 p.m. on the closing date, unless an exception is granted. An announcement complying with the Listing Rules must be published by 7:00 p.m. on the closing date, detailing whether the offer has been revised, extended, expired, or declared unconditional as to acceptances or in all respects. A draft of the announcement must be submitted to the Executive by 6:00 p.m. for review.

The announcement must include the total number of shares and rights over shares:

- (a) for which acceptances have been received;
- **(b)** held, controlled, or directed by the offeror or its concert parties before the offer period; and

(c) acquired or agreed to be acquired during the offer period by the offeror or its concert parties.

Details of any relevant securities in the offeree company that have been borrowed or lent by the offeror or its concert parties must be included, except for borrowed shares that have been on-lent or sold.

The announcement must specify the percentages of share capital and voting rights percentage represented by these numbers.

Note to Rule 19.1

Schemes of arrangement

In the case of a scheme of arrangement, an announcement must be made on the date of any shareholder meeting to approve the scheme, following Rule 19.1 requirements and the disclosure requirements are set out under Rule 2.9..

19.2 Consequences of failure to announce

If the offeror cannot comply with Rule 19, the Executive should be consulted, and acceptors may be granted a right of withdrawal until compliance is achieved.

Notes to Rule 19

1. Informing other parties

The offeror is required to inform the offeree company and any competing offeror the notification made under Rule 19.1 promptly after notifying the Executive and the Stock Exchange.

2. Statements regarding acceptances

Any statements made during the offer period about the level of acceptances or the number or percentage of acceptors must be immediately announced with the details specified in Rule 19.

3. Statements about withdrawals

If the offeree company intends to highlight withdrawals of acceptance, it must consult the Executive before making any announcements.

4. Incomplete acceptances and offeror purchases

Incomplete acceptances and purchases should only be included in announcements if they can be counted towards fulfilling an acceptance condition as per Note 1 to Rule 30.2.

5. Persons acting in concert

Rule 19 announcements must clearly state the extent of acceptances from the offeror's concert parties, including the number of shares and rights over shares held before the offer period and acquired or to be acquired during the offer period.

6. Acceptances of cash alternatives

Acceptances of cash alternatives must be disclosed in accordance with Rule 19.

7. Partial offers and share buy-back by general offers

For partial offers or share buy-backs by general offer, the announcement must detail how each shareholder's pro rata entitlement was determined.

Rule 20 -Settlement of consideration and return of share certificates

Summary of the key points:

Rule 20 sets out the procedures for the settlement of consideration and return of share certificates in offers. For general offers, shares cannot be acquired by the offeror until the offer is or is declared unconditional. Payment must be made within 7 business days after the offer becomes unconditional or after receiving a duly completed acceptance, whichever is later. If an offer is unconditional from the start, payment must be made within 7 business days after receiving duly completed acceptances. In partial offers, shares cannot be acquired before the offer closes. Payment must be made within 7 business days after the close of the partial offer.

If an offer is withdrawn or lapses, the offeror must return share certificates within 7 business days to shareholders who accepted the offer. Upon the close of an offer, the offeror must dispatch or make available share certificates for untaken or untendered shares by the time payment is made. This Rule also places emphasis on the principle of equal treatment for all shareholders, prohibiting any special deals or arrangements for certain shareholders.

20.1 Timing of acquisition and payment

(a) General

For general offers, shares cannot be acquired by the offeror until the offer is or is declared unconditional. Payment by the offeror must be made within 7 business days after t the offer becomes or is declared unconditional and the receipt of a duly completed acceptance, whichever is later. If an offer is unconditional from the start, the consideration must be delivered within 7 business days after receiving duly completed acceptances.

(b) Partial offer

In partial offers, shares cannot be acquired before the offer closes. Payment by the offeror must be made as soon as possible but latest within 7 business days after the close of the partial offer.

20.2Share certificates

(a) Withdrawn or lapsed offers

If an offer is withdrawn or lapses, the offeror must return share certificates or make them available for collection as soon as possible but latest within 7 business days after the withdrawal or lapse of the offer to offeree shareholders who accepted the offer.

(b) Close of offer

Upon the close of an offer, the offeror must dispatch the share certificates for untaken or untendered shares or make them available for collection as soon as possible but latest by the time the consideration is paid to offeree shareholders who accepted the offer.

Note to Rule 20

Equality of treatment

All shareholders are to be treated equally, any special commitment or arrangements regarding payment of consideration for certain shareholders that could result in unequal treatment are prohibited.

Rule 21 – Restrictions on dealings before and during the offer

Summary of the key points:

Rule 21 imposes restrictions on dealings in securities during the period before and during an offer. Rule 21.1 prohibits any dealings in the securities of the offeree company by individuals with confidential price-sensitive information about an actual or contemplated offer until the offer is announced or discussions are terminated. This restriction does not apply to those acting in concert with the offeror if the securities are excluded from the offer or if there are no-profit arrangements. Additionally, no recommendations for dealing in relevant securities can be made by those privy to such information.

Rule 21.2 restricts the offeror and those acting in concert from selling securities in the offeree company during the offer period without the Executive's consent and a 24-hour public notice of such sales. Sales below the offer value are not permitted, and further purchases are restricted after sales announcements. The Executive's consent is not required for certain arrangements to maintain the offeree company's listing status, provided they are not effective before the offer becomes unconditional. Further restrictions and details such as clarifications on the circumstances under which dealings may be restricted, such as consortium offers and joint offerors, and the role of discretionary fund managers and principal traders are set out under the Notes to Rule 21.2. Rule 21.3 extends these restrictions to share dealings and transactions by the offeror during securities exchange offers, prohibiting dealings in the offeror's securities during the offer period without the Executive's consent.

Rule 21.5 addresses dealings by certain associates of the offeree company, requiring Executive consent for specific transactions. Rule 21.6 discusses the position of dealings by connected discretionary fund managers and principal traders, detailing situations where they will be presumed to be acting in concert with an offeror or offeree company. Rule 21.7 restricts securities borrowing and lending transactions by offerors, the offeree company, and certain other parties during the offer period, with exceptions requiring Executive consent and public disclosure.

21.1 Restrictions on dealings before the offer

During the period when there is reasons to believe that there will be an approach, an offer or termination of discussions and that an announcement on this will be made, no person, except the offeror, may deal in the securities of the offeree company if they possess confidential price-sensitive information about an actual or contemplated offer. This restriction does not apply to persons acting in concert with the offeror if the securities are excluded from the offer or if there are no-profit arrangements.

Dealings in the offeror's securities are restricted unless the offer or proposed offer is not price-sensitive to those securities.

Individuals with such information are prohibited from recommending dealings in the relevant securities to others.

21.2 Restrictions on dealings during the offer

During an offer period, the offeror and persons acting in concert must not sell securities of the offeree company without the Executive's prior consent and a 24-hour public notice. Other than the exceptions below, the Executive generally does not consent to sales during a mandatory offer under Rule 26, and sales below the offer value are not allowed. After announcing potential sales, further purchases by the offeror or concert parties are restricted, and offer revisions are permitted by the Executive only under exceptional circumstances.

The Executive's consent is not needed for placing or underwriting arrangements to maintain the offeree company's public shareholding to maintain its listing status, provided that they are not effective before the offer becomes unconditional. If the offeror seeks to enter into arrangements to hold less than 75% of the offeree company's shares (or any other percentage permitted by the Stock Exchange in relation to the public float requirement), the Executive's consent is required.

Notes to Rules 21.1 and 21.2

1. No-profit arrangement

No-profit arrangements by the potential offeror with its concert parties for the concert party to purchase the offeree company's securities while the offeror bears all risks and benefits, are not prohibited by Rule 21. Rule 21 of the SFC prohibits arrangements where the concert party will obtain a benefit of potential benefit. The Executive must be consulted in cases of doubt.

2. Other circumstances in which dealings may not take place

Offerors or other persons may be restricted from dealing in or procuring others to deal in securities if they have been provided with confidential price-sensitive information by the offeree company before an offer announcement.

3. Consortium offers and joint offerors

In offers by joint offerors or by a company or vehicle formed by a group of persons, the involved parties are considered a consortium. The Executive must be consulted before any securities purchases by consortium members or potential members. Existing holdings of securities must be shown to have been acquired before the consortium's formation or contemplation.

Consortium members are generally not allowed to purchase securities unless there are arrangements ensuring purchases are proportionate to members' interests in the consortium company or provide no profit to the purchaser.

4. No dealing contrary to published advice

Directors and financial advisers owning securities must not deal contrary to advice given to shareholders or advice they are reasonably considered to be associated with, without public notice and explanation. Under this Note, securities include options and derivatives related to the company.

5. Discretionary fund managers and principal trades

Dealings by discretionary fund managers and principal traders connected with an offeror are subject to Rule 21.6.

Dealings between an offeror and connected exempt principal traders should reference Rule 35.2.

21.3 Restrictions on share dealings and transactions by offeror during securities exchange offers

If the offer includes securities of the offeror or its concert parties as consideration, the offeror and its concert parties are restricted from dealing in the relevant securities or conducting on-market buy-backs during the offer period, unless consent is obtained from the Executive.

If the offer includes securities of the offeror or its concert parties as consideration, off-market share buy-backs or buy-backs by general offer are prohibited after the announcement of a firm intention to make an offer under Rule 3.5 until the end of the offer period, unless the buy-back was announced prior to the Rule 3.5 announcement.

The offeror or its financial advisers are not restricted from arranging underwriting for a cash alternative to the offeror's securities in a securities exchange offer. Consultation with the Executive is required if it will significantly affect the value or market price of the relevant securities it.

21.4 Dealings after termination of discussions

If discussions on the offer are terminated or the offeror decides not to proceed with the offer, the offeror, persons acting in concert, or those privy to information are prohibited from dealing in securities of the offeree company by the offeror, after the announcement that offer discussions are taking place or an approach or offer is forthcoming, until an announcement in relation to thet termination or decision not to proceed is made.

21.5 Dealings in offeree company securities by certain offeree company associates

Financial advisers, stockbrokers, and related entities of the offeree company (except for exempt fund managers and exempt principal traders) from purchasing offeree company

shares or dealing in related securities during the offer period, except with the Executive's consent. This includes:

- (a) buy shares of the offeree company or trade related securities (convertibles, warrants, options, or derivatives) for its own account or discretionary investment accounts;
- **(b)** lend money to facilitate such trading, except for transactions in the ordinary business and lending on normal commercial terms; or
- (c) enter into any formal or informal indemnity, option agreement or arrangement, agreement or understanding that incentivises retaining or refrain from trading the offeree company's securities.

Notes to 21.5

Recommended or unconditional mandatory offers

The Executive typically consents to offers under Rule 21 if the offer is recommended by the offeree company's board and there is no competing offer, or if it is an unconditional mandatory offer under Rule 26.

21.6 Dealings by connected discretionary fund managers and principal traders

This Rule sets out the position in relation to connected discretionary fund managers and principal traders who lack exempt status or whose exempt status is irrelevant due to Note 2 of the definitions of exempt fund manager and exempt principal trader, as well as exempt principal traders in respect of un-exempted dealing activities.

Discretionary fund managers and principal traders connected with an offeror or potential offeror are not presumed to act in concert with the offeror until the offeror's identity is publicly announced or they have actual knowledge of a potential offer. Rules 23, 24, 25, 26, 28 will be relevant to purchases, Rule 21.2 is relevant for sales of offeree company securities, and Rule 21.7 is relevant to securities borrowing and lending.

Similarly, discretionary fund managers and principal traders who are connected with the offeree company are not presumed to act in concert with the offeree company until the offer period starts or they have actual knowledge of a potential offer. Relevant rules include Rules 21.5 and 26 for purchases and Rule 21.7 for securities borrowing and lending.

An exempt fund manager or exempt principal trader connected solely due to control (refer to Note 1 to the definitions) relationships with a financial or professional adviser to the offeror or offeree company is not presumed to act in concert, even after the offer period starts or the offeror's identity is announced.

Notes to Rule 21.6

1. Dealing before a concert party relationship arising

Dealings and securities borrowing and lending transactions by discretionary fund managers and principal traders connected with an offeror or potential offeror are generally not relevant under Rules 21.2, 21.7,23,24,25,26 and 28 until the offeror's identity is publicly announced or they have actual knowledge of a potential offer.

Similarly, for those connected with the offeree company, their dealings and securities borrowing and lending transactions are not relevant under Rule 26 until the offer period starts or they have actual knowledge of a potential offer.

2. Qualifications

If a connected discretionary fund manager or principal trader is indeed acting in concert with an offeror or offeree company, the usual consequences of acting in concert apply, regardless of the offer period or whether the identity of the offeror or potential offer is publicly announced.

Rule 21.6 may be relevant if an offeror or its group has funds discretionarily managed by an exempt fund manager. The exempt status under Rule 21.6(c) does not apply to those securities and the Executive should be consulted.

For fund managers or principal traders that fall under class (4) of the definitions of connected fund manager and connected principal trader, the Executive may waive the presumption of acting in concert in specific circumstances, such as insignificant investments in a consortium.

3. Dealings by exempt principal traders not covered by their exempt status

Exempt principal traders connected with an offeror may cease dealing activities after the offeror's identity is announced or upon gaining actual knowledge of a potential offer. With prior consultation with the Executive, an exempt principal trader may be allowed to reduce its interest in offeree or offeror securities, or to acquire interests to reduce a short position, without these dealings being relevant for the purposes of Rules 21.2, 21.5, 23, 24, 25, 26 and 28. These dealings typically do not require disclosure under Rule 22.4, and they must occur within a pre-agreed timeframe.

This provision also applies to exempt principal traders (for dealing activities not covered by their exempt status) connected with the offeree company after the offer period starts or upon gaining actual knowledge of a potential offer.

4. Rule 26

Rule 26 requires consultation with the Executive if the offeror or potential offeror, along with persons acting in concert including any connected discretionary fund managers and principal traders, holds 30% or more of the voting rights in the offeree company once the offeror's identity is public.

5. Disclosure of dealings in offer documents

Disclosure of securities holdings and dealings by connected discretionary fund managers and principal traders (unless exempt) must be included in offer documents and offeree board circulars, as specified in paragraph 4 of Schedule I and paragraph 2 of Schedule II.

21.7 Restrictions on securities borrowing and lending transactions by offerors, the offeree company and certain other parties

Rule 21.7 restricts unwinding a securities borrowing and lending transactions involving relevant securities of the offeree company during the offer period in securities exchange offers for the offeror, offeree company, and certain financial or professional advisers (and persons controlling, controlled by or under the same control as any such adviser) or persons acting in concert, unless the Executive consents. Exemptions apply to exempt principal traders and fund managers.

Notes to Rule 21.7

- 1. Relevant securities should reference Note 4 to Rule 22.
- 2. Return of borrowed relevant securities

Borrowers and lenders do not typically need the Executive's consent to redeliver recalled relevant securities or accept redelivery of un-recalled relevant securities under an existing agreement. These actions may be required to be publicly disclosed as if they were dealings in the securities, following Notes 5, 6, and 7 to Rule 22.

3. Disclosure or notice where consent is given

If the Executive consents to a transaction to which Rule 21.7 applies in relation to relevant securities, the transaction must be publicly disclosed as if it were a dealing in the relevant securities in accordance with Notes 5, 6, and 7 to Rule 22. For multiple transactions, the Executive may require a public notice instead of individual disclosures, and the Executive should be consulted on the notice's content and timing.

4. Discretionary fund managers and principal traders

Discretionary fund managers and principal traders involved in transactions subject to Rule 21.7(d) will be treated according to Rule 21.6.

5. The Executive generally waives restrictions in Rule 21.7 when an offer is declared unconditional in all respects.

Rule 22 – Disclosure of dealings during offer period

Summary of the key points:

Rule 22 sets out the disclosure requirements for dealings in relevant securities during an offer period. It mandates that any dealings by an offeror, the offeree company, or their associates must be disclosed, with specific rules depending on whether the dealings are for their own account, for discretionary clients, or for non-discretionary clients. Public disclosure is required for dealings on one's own account and for discretionary clients unless the associate is an exempt fund manager, in which case private disclosure is required. Non-discretionary client dealings must also be privately disclosed unless consent from the Executive is obtained. The Rule specifies that discretionary accounts are treated as controlled by the manager, and all such operations within a group must be aggregated. Exempt principal traders connected with an offeror or offeree must disclose aggregated dealings by the next business day of the transaction, including details such as total purchases and sales, prices, and the nature of any options or derivatives involved.

The rule also provides guidance on the definition of relevant securities as well as the timing and method of disclosure, requiring that disclosures be made by noon on the first business day following the transaction, or the second business day if in U.S. time zones. Public disclosures must be made using prescribed forms and posted on the SFC and Stock Exchange websites, while private disclosures are submitted to the Executive. The document emphasises the importance of including comprehensive details in disclosures, such as, inter alia, the identity of the person dealing, the total number of securities involved, and any indemnity, arrangements and dealings that might influence dealings. It also outlines the responsibilities of intermediaries like stockbrokers and banks to ensure clients are aware of the disclosure obligations. The rule applies to both listed and unlisted public companies and sets out other disclosure requirements for potential offerors and class (6) associates.

22.1 Dealings by parties and by associates for themselves for discretionary clients

(a) Own account

Dealings for the own account of the offeror, the offeree company, and both of their associates must be publicly disclosed according to Notes 5, 6 and 7 below.

(b) For discretionary clients

For discretionary clients, dealings in relevant securities by the offeror or the offeree company and both of their associates for discretionary investment clients must also be publicly disclosed unless the associate is an exempt fund manager connected with the offeror or offeree company, in which case private disclosure in accordance with Notes 5, 6

and 7 is required unless with the consent of the Executive. If the exempt fund manager is an associate by virtue of class (6) of the definition of associate, public disclosure is required.

22.2 Dealings by parties and by associates for non-discretionary clients

Dealings in relevant securities for non-discretionary clients during the offer period by the offeror or the offeree company and both of their associates for non-discretionary investment clients must be privately disclosed in accordance with Notes 5, 6 and 7 unless consent is obtained from the Executive

22.3 Discretionary accounts

Relevant securities managed in discretionary accounts are treated as controlled by the manager, not the client, and must be aggregated if managed within the same group.

22.4 Connected exempt principal traders

For dealings by exempt principal traders connected with an offeror or the offeree company, they must be aggregated and disclosed in accordance with Note 6(a) below by 12.00 noon on the first business day following the transactions.

Disclosure must include total purchases and sales, the highest and lowest prices paid and received, and whether the connection is with the offeror or the offeree company. For dealings in options or derivatives, full details must be provided to ensure the nature of the dealings is clear.

Notes to Rule 22

1. Consultation with the Executive

The Executive should be consulted in cases of doubt regarding the application of Rule 22.

2. Disclosure of dealings in offeror

Disclosure of dealings in the offeror's securities is required only in a securities exchange offer.

3. Offer period

Rule 22 applies only during an offer period, and certain dealings by any associate of an offeror or the offeree company (other than persons acting in concert with any offeror) need not be disclosed during when the offer is unconditional and the end of the offer period.

4. Relevant Securities

"Relevant securities" for Rule 22 includes:

- (a) securities of the offeree company subject to the offer with voting rights;
- **(b)** equity share capital of the offeree company and in a securities exchange offer, those of the offeror or the relevant company;

- **(c)** securities of an offeror or of a company the securities of which are to be offered as consideration for the offer carrying the same or substantially the same rights as any to be issued as consideration;
- (d) securities carrying conversion or subscription rights into the securities above; and
- (e) options and derivatives related to the securities above.

The taking, granting, exercising, lapsing, or closing out of options; or exercising any conversion rights; or the acquisition of, entering into, closing out, exercise of any rights under, or issue or variation of, a derivative in relevant securities mentioned above will be regarded as dealing in relevant securities.

5. Timing of disclosure

Disclosure of such dealings must occur by 12.00 noon on the first business day after the transaction, or by 12.00 noon of the second business day if the transaction occurs in U.S. time zones. The Executive should be consulted if there are difficulties meeting these disclosure deadlines.

- 6. Method of disclosure
- (a) Public disclosure requires written submission to the Executive using prescribed forms from the SFC website, with the Executive posting disclosures on the SFC and Stock Exchange websites. Individuals must be aware of the disclosure requirements under Part XV of the Securities and Futures Ordinance. If additional announcement will be made, the issuer must ensure that there will not be any confusion. Public disclosures can be made by the individual or an agent, but where there are more than one agent, the issuer must ensure that there is appropriate allocation of responsibility and no disclosure is overlooked or duplicated.
- **(b)** Private disclosures are made in writing to the Takeovers and Mergers Executive at the SFC using prescribed forms, but these are not published.
- 7. Details to be included in disclosures
- (a) Public disclosures should follow a specimen form available from the Executive or the SFC's website including the following specific information:
 - the total securities purchased, sold, redeemed, or bought back by the company;
 - prices paid or received must be disclosed, with each underlying trade specified in the case of average price bargains;
 - identity of the person dealing, and if different, the owner or controller;
 - if the dealing involves an associate of an offeror or offeree company, an explanation
 of this status;
 - a statement if the disclosure is made by a 5% shareholder or group of shareholders;

- the total amount of securities owned or controlled post-dealing, including those under agreements or understandings, and the percentage they represent;
- details of any arrangements required by Note 8 to Rule 22.

The ultimate beneficial owner or controller must be specified; naming nominees or vehicle companies is insufficient. The Executive may request additional information to identify other interested parties in the securities. For fund managers disclosing on behalf of discretionary clients, client names are not required to be disclosed, subject to Note 10.

Full details of option or derivative dealings must be provided, including securities under option, exercise period, exercise price, and option money paid or received. For derivatives, details should include reference securities, maturity or closing out date, and reference price.

If an associate is classified as such for multiple reasons, all reasons must be specified.

Disclosures of securities borrowing and lending transactions must include all relevant details as per Notes 2 and 3 to Rule 21.7 and must be disclosed in the specified form.

When a person subject to Rule 21.7 discloses dealings in relevant securities and has previously borrowed or lent such securities, the disclosure must be in a form agreed by the Executive.

(b) Private disclosures by exempt fund managers connected with an offeror or offeree company must follow the format required by the Executive, with specimen forms available from the Executive or the SFC website.

Private disclosures under Rule 22.2 must include the identity of the person dealing, the total number of relevant securities purchased or sold, and the prices paid or received with each underlying trade specified in the case of average price bargains. Disclosures of dealings in options or derivatives must include the same information as specified in Note 7(a) to Rule 22.

8. Indemnity and other arrangements

Note 8 defines an arrangement as any formal or informal arrangement involving rights over shares, any indemnity arrangement, agreement or understanding related to relevant securities that may induce dealing or refraining from dealing. If a person is party to such an arrangement with any offeror or its associate, they are considered an associate and possibly acting in concert with the offeror, making Rules 21, 23, 24, 25 and 26 and paragraph 4 of Schedule I relevant. Persons party to such an arrangement with any offeree or its associate will be considered an associate, and Note 5 to Rule 26.1 and paragraph 2 of Schedule II may be relevant.

Details of any of these arrangements must be publicly announced and disclosed in the relevant circular, regardless of whether any dealing occurs. Changes to any previously

disclosed indemnity or arrangement must also be disclosed, and the Executive should be consulted in cases of doubt.

9. Dealings in options and derivatives

Disclosure of dealings in options or derivatives is required only if the person owns or controls 5% or more of the class of securities that are the subject of the option or to whose price the derivative is referenced.

10. Discretionary fund managers

Discretionary fund managers are considered to control the relevant securities they manage, not the beneficial owners, assuming that fund manager takes instructions from the owner and the arrangement is not used to avoid disclosure. Rule 22.3 requires discretionary fund managers to aggregate investment accounts to determine disclosure obligations. Disclosure is required if a discretionary fund manager conducts transactions for someone acting in concert with an offeror, offeree company, or a 5% shareholder.

11. Responsibilities of stockbrokers, banks, and other intermediaries

Stockbrokers, banks, and intermediaries dealing in relevant securities for clients must ensure clients are aware of disclosure obligations under Rule 22 and ensure compliance. Principal traders and dealers should inform clients of relevant Rules, except when the total value of dealings (excluding stamp duty and commission) in relevant security is under \$1 million in a 7-day period. Principals, associates and other persons must still initial dealing disclosure regardless of the total value involved. Intermediaries must cooperate with the Executive in inquiries and provide relevant information, including client identities.

12. Unlisted public companies

Disclosure requirements also apply to dealings in securities of unlisted public companies.

13. Potential offerors

If a potential offeror is involved in an announcement regarding ongoing talks or has announced consideration of making an offer, the potential offeror and its concert parties must disclose dealings as per Rule 22. The disclosure must include the identity of the potential offeror.

14. Disclosure of dealings by class (6) associates of an offeror

Associates of an offeror, specifically those classified under class (6) of the definition of associate, are exempt from disclosing dealings in the offeree company's relevant securities if the offer is, or is likely to be, solely in cash.

Rule 23 -Nature of consideration to be offered

Summary of the key points:

Rule 23 mandates a cash offer when an offeror or any person acting in concert with it purchases shares of the offeree company for cash, either during the offer period or within 6 months prior to the commencement of the offer period, if these shares represent 10% or more of the voting rights of that class. The cash offer must be at least equal to the highest price paid for the shares during this period. Exceptions to this requirement can be made with the Executive's consent. The Rule also addresses the calculation of purchase prices, its application to gross purchases, requirements on acquisitions for securities, rules on revisions to the offer, the treatment of convertible securities, the timing of offers, and other factors relevant to calculating the percentages under Rule 23.1 Additionally, it specifies that any dividends paid by the offeree company should not reduce the offer consideration unless explicitly stated.

Rule 23.2 requires a securities offer when shares carrying 10% or more of the voting rights are acquired in exchange for securities within 3 months before or during the offer period. These securities must be offered to all shareholders of that class on the same terms. The Executive has discretion to require such offers even if the acquisition is less than 10% or occurred more than 3 months prior, usually only if the vendors are directors or closely connected persons. The rule also covers scenarios involving management buy-outs, acquisitions for a mixture of cash and securities, and purchases in exchange for securities with selling restrictions.

23.1 When cash offer is required

A cash offer is mandated unless the Executive consents otherwise in specific cases.

A cash offer is required if:

- (a) shares of any class in the offeree company are purchased for cash by an offeror or any person acting in concert with the offeror during the offer period and within 6 months before its commencement, carrying 10% or more of the voting rights at a class meeting. The offer must be in cash or include a cash alternative at no less than the highest price paid by the offeror or its concert parties during this period;
- **(b)** subject to (a) above, shares of any class are purchased for cash by an offeror or its concert parties during the offer period, where the offer is in cash or include a cash alternative at no less than the highest price paid by the offeror or its concert parties during the offer period;
- (c) the Executive deems it necessary to ensure compliance with General Principle 1.

The offeror can consult the Executive if they believe the highest price requirement should not apply, and the Executive may agree to a lower price.

Notes to Rule 23.1

1. Price

Stamp duty and dealing costs are excluded from the price calculation.

2. Gross purchase

Rule 23.1(a) typically applies to gross purchases, with no deduction allowed for shares sold during that period, unless under exceptional circumstances and with approval from the Executive.

3. When the obligation is satisfied

The cash obligation is satisfied if a cash offer or alternative at the required price was open for acceptance at the time of purchase, even if the offer or alternative immediately closes afterwards. If a cash offer or cash alternative is less than required under Rule 23.1, or if there is no cash offer or alternative, the offer must revise the offer, and Rule 16 applies.

4. Equality of treatment

The Executive's discretion to require cash availability in cases where less than 10% of shares have been purchased in the 6 months before the offer period is typically not exercised unless the vendors are directors or closely connected persons where small purchases may be relevant. Rule 23.1(c) may also apply when 10% or more has been acquired in the previous 6 months for an offer involving a mix of securities and cash.

5. Acquisitions for securities

Shares acquired in exchange for securities during the 6 months before the offer period are generally considered cash purchases based on the securities' value at the time of purchase. If the vendor must hold the securities until the offer lapses or consideration is posted to accepting shareholders, the obligations under Rule 23.1 will not be applicable.

6. No revision during final 14 days of offer period

Offers cannot be revised in the final 14 days of the offer period and offerors should not put itself in a position where they are required to revise its offer under Rule 23.1 in this time period, as the offer must remain open for acceptance for 14 days after a revised offer document is issued. Immediate announcements are required if a revision obligation arises.

7. Convertible securities, warrants, options and subscription for new shares

Conversion or exercise of convertible securities, warrants, options, or subscription rights are treated as purchases of underlying shares, with prices calculated based on purchase price of the convertible securities, warrants or options and the relevant conversion/exercise terms. Subscription for new shares is also treated as a purchase. The Executive should be consulted where there are uncertainties.

8. Relevant factors for adjusted price

When evaluating applications for an adjusted price, the Executive may consider factors such as the size and timing of relevant purchases; the attitude of the offeree board; whether shares have been purchased at high prices from directors or other persons closely connected with the offeror or the offeree company; and the number of shares purchased in the preceding 6 months.

9. Discretionary fund managers and principal traders

Dealings by discretionary fund managers and principal traders connected with an offeror are governed by Rule 21.6.

10. Allotted but unissued shares

Allotted but unissued shares with voting rights, such as those under a rights issue where the shares are represented by renounceable letters of allotment, should be considered when calculating percentages under Rule 23.1, and the Executive should be consulted.

11. Dividends

Offerors cannot reduce the offer consideration by the amount of a dividend paid or payable by the offeree company to the offeree's shareholders unless the offerors have reserved the right to do so in an announcement. For dividends or distributions subject to withholding or other deductions the consideration should be reduced by the gross amount received or receivable. If a no increase statement is made and the dividend or distribution later becomes payable or is paid, the offer consideration must be reduced by the dividend amount unless specified that the offeree company shareholder are entitled to the dividend or distribution in addition to the consideration.

12. Offer period

The offer period under Rule 23.1 refers to the time the offeree company is in an offer period, regardless of the offeror's intentions of an offer at the start of the period.

23.2 When a securities offer is required

A securities offer to all other holders of shares of that class is required if an offeror and any concert party purchase 10% or more of the offeree company's voting shares in exchange for securities within 3 months before the start of the offer period and during the offer period. If the vendor is not required to hold the securities until the offer lapses or the offer consideration is posted, there is an obligation to make a cash offer or provide a cash alternative under Rule 23.

Notes to Rule 23.2

1. Basis on which securities are to be offered

Securities offered under Rule 23.2 must be based on the same number of consideration securities received by the vendor for each offeree company share, not on the value of the securities received by the vendor at the time of purchase. For multiple purchases, the offer

must be on the basis of the greatest number of consideration securities received per each offeree company share.

2. Equality of treatment

The Executive may (although not normally exercised unless the vendors are directors or closely connected persons with the offeror or offeree company) require equal treatment in offering securities to all shareholders, even if the purchase is less than 10% or occurred more than 3 months before the offer period.

3. Vendor placings

Shares acquired in exchange for securities are considered cash purchases if the offeror or associates arrange for immediate cash placement of these securities, and there will not be an obligation to make a securities offer.

4. Management retaining an interest

In management buy-outs, if only management of the offeree company receives the offeror securities, the Executive will not require all shareholders to be offered the securities even if the relevant members of management propose to sell more than 10% of the offeree company's shares, provided Note 3 to Rule 25 is complied with. But if offeror securities are available to non-management shareholders, they must be offered to all shareholders on the same terms.

5. Acquisition for a mixture of cash and securities

The Executive should be consulted if 10% or more of the voting rights have been acquired for a combination of securities and cash during the offer period and within 6 months before its commencement.

6. Purchase in exchange for securities to which selling restrictions are attached

If an offeror or any person acting in concert with it has purchased 10% or more of the voting rights of any class of shares in the offeree company during the offer period and within 6 months before its commencement, and the consideration includes shares with selling restrictions as described in Rule 23.2, the Executive should be consulted.

7. Applicability of the Notes to Rule 23.1 to Rule 23.2

Notes 2, 5, 6, 7, and 9 to 12 to Rule 23.1 may be relevant to Rule 23.2.

Rule 24 Purchases resulting in an obligation to offer a minimum level of consideration

Summary of the key points:

Rule 24 governs the obligations of an offeror when purchasing shares in an offeree company, particularly in relation to the minimum level of consideration. Rule 24.1 specifies that if an offeror or any person acting in concert with it purchases shares before a Rule 3.5 announcement within certain periods, the offer to shareholders must not be on less favorable terms than those purchases. This includes purchases made within 3 months before the offer period, during the offer period before a Rule 3.5 announcement, or earlier if deemed necessary by the Executive to uphold General Principle 1. If shares are purchased above the offer price after a Rule 3.5 announcement, the offer must be increased to at least the highest price paid. Rule 24.2 addresses offers involving further issues of listed securities, requiring the offeror to maintain the cash-to-securities ratio if the offer value is increased due to additional share purchases. Rule 24.3 requires immediate announcement of any share purchases above the offer price, including details of the shares and price paid.

The notes to Rule 24 provide additional guidance, such as prohibiting offer increases during the final 14 days of the offer period and treating the conversion or exercise of convertible securities, warrants, options or other subscription rights as share purchases. The Rule also address the arrangements in offers where the shareholders can retain dividends. The Executive also has the discretion to adjust terms in exceptional circumstances, considering factors like market conditions, size and timing of the purchase, the involvement of directors or closely connected persons and whether there are competing offers. Purchases before the 3-month period are generally not subject to this Executive discretion unless it involves connected persons. The Rule also clarifies that a cash offer is not mandatory unless required by other rules, and securities offered must have a value at least equal to the highest relevant purchase price. Unlisted securities do not satisfy obligations under Rule 24, and dealings by connected discretionary fund managers and principal traders are subject to Rule 21.6. The offer period is defined as the time the offeree company is in an offer period, regardless of the offeror's intentions at the start.

24.1 (a) Purchases before a Rule 3.5 announcement

If an offeror or any person acting in concert with it purchases shares in the offeree company before a Rule 3.5 announcement, the offer to shareholders of the same class must not be on less favorable terms. This applies to purchases made:

i. within 3 months before the offer period;

- ii. during the period between the start of the offer period and the Rule 3.5 announcement;
- **iii.** before the 3-month period before the offer period if deemed necessary by the Executive to uphold General Principle 1.

24.1 (b) Purchases after a Rule 3.5 announcement

If shares in the offeree company are purchased by the offeror or its concert parties above the offer price after a Rule 3.5 announcement and during the offer period, the offer must be increased to at least the highest price paid for any shares acquired, excluding stamp duty and dealing costs. Purchases may also trigger obligations under Rule 23, and compliance with Rule 23 is generally considered to satisfy obligations under Rule 24.

24.2 Offers involving a further issue of listed securities

If the offer involves issuing additional listed securities, the current value of the offer should be based on the weighted average traded price of board lots from the immediately preceding trading day. If the offer includes both cash and securities and the offeror must increase the value of the offer for subsequent purchases of relevant securities, any increase in the offer value should maintain the same cash-to-securities ratio.

24.3 Shareholder notification

Any purchase of shares above the offer price must be immediately announced, including details of the revised offer, the number and class of shares purchased, and the price paid.

Notes to Rule 24

1. No increase during final 14 days of offer period

An offeror should not place itself in a position where it is required to increase the offer during the final 14 days before the offer can become unconditional as to acceptances, as the offer must remain open for acceptance for 14 days after a revised offer document is issued.

2. Convertible securities, warrants, options and subscription for new shares

Transactions involving convertible securities, warrants, options, and subscription rights are treated as purchases of underlying shares, with the purchase price calculated based on the terms of the relevant conversion or exercise. Subscription for new shares is also considered a purchase under Rule 24 and the Executive should be consulted when in doubt.

3. Cum dividend

Shareholders entitled to retain a declared or forecast dividend can have shares purchased by the offeror or its concert parties at prices up to the net cum dividend equivalent of the offer value without requiring a revision of the offer.

4. Adjusted terms

The Executive has discretion to agree to adjusted terms under Rule 24.1(a)(i) or (ii) only in exceptional circumstances. Factors considered include whether the relevant purchase was on market terms at the time of purchase, changes in market price, size and timing of purchase, the offeree company's board's attitude, whether it is a high-price purchase from directors or connected persons, and whether there is an announced competing offer.

5. Purchases before the 3-month period

Rule 24.1(a)(iii) discretion is typically not exercised by the Executive unless vendors are directors or closely connected persons with the offeror or offeree company.

6. No less favourable terms

Under Rule 24.1(a), a cash offer is not required even if shares were purchased for cash, unless Rule 26 (mandatory offer) or Rule 23 (cash or securities offer requirement) applies. Securities offered as consideration must have a value at least equal to the highest purchase price at the time of the firm offer announcement. The Executive must be consulted on the proposed consideration to ensure it is not influenced by undue price or trading volume movements. Adjustments or re-calculations may be required if such movements occur. If there is a restricted market or the amount of securities to be issued is relatively large to those already listed, the Executive may require price justification in relation to the value of the offer.

7. Unlisted securities

Offers involving unlisted securities do not satisfy obligations under Rule 24.

8. Discretionary fund managers and principal traders

Dealings by discretionary fund managers and principal traders connected with an offeror are governed by Rule 21.6.

9. Offer period

The offer period under Rule 24 refers to the time the offeree company is in an offer period, regardless of the offeror's intentions on an offer at the start of the offer period.

Rule 25 – Special deals with favourable conditions

Summary of the key points:

Rule 25 prohibits offerors or those acting in concert with them from making special arrangements with shareholders that include favorable conditions not extended to all shareholders, unless consent is obtained from the Executive. Special arrangements include promises to compensate for price differences in share sales, irrevocable commitments with options, and arrangements where a person acting in concert with the offeror benefits beyond normal expenses. The Executive must be consulted in cases of doubt regarding these arrangements. Finders' fees for shareholders promoting an offer are generally not approved unless they are on normal commercial terms and comparable to what a non-shareholder would receive. Management of the offeree company may retain an interest, but the risks and rewards must also apply to the management's retained interest. The Executive requires an independent adviser's public statement on the fairness of such arrangements and may require shareholder approval if the offeror and management hold more than 5% of equity. Disposal of offeree company assets to a shareholder requires the Executive's consent, an independent adviser's fairness statement, and approval by uninvolved shareholders. Repayment of shareholder loans or assignment of debts may be considered special deals but can be approved if they are arm's length transactions on normal commercial terms, subject to compliance with Note 4 to Rule 25.

Offerors and their associates are prohibited from making arrangements with shareholders to purchase or sell seucrities of the offeree company or acceptance of the offer that include favorable conditions not extended to all shareholders, unless consent is obtained from the Executive. This rule applies during an offer, when an offer is reasonably anticipated, and for 6 months after the offer closes.

Notes to Rule 25

1. Top-ups and other arrangements

An arrangement with special conditions includes any agreement where a seller is guaranteed compensation if a subsequent successful offer price exceeds their sale price (such as a price top-up arrangement), or an irrevocable commitment to accept an offer combined with a put option if the offer fails. While arrangements where a person acting in concert with the offeror purchases shares in the offeree company with the offeror assuming all risks and benefits are permitted, any additional benefit to the concert party (beyond normal expenses and carrying costs) is generally prohibited. In cases of uncertainty, the Executive must be consulted.

2. Finders' fees

The rule also addresses finders' fees, stating that shareholder remuneration for participating in promoting an offer is generally not allowed unless it is on normal commercial terms and comparable to what a non-shareholder would receive. Such remuneration cannot be shared with other shareholders of the offeree company, and the Executive must be consulted early in relevant cases.

3. Management retaining an interest

When management retains an interest in order to continue to be financially involved in the company, the Executive will ensure that both risks and rewards of equity shareholding apply to the retained interest. Options guaranteeing the original offer price as a minimum are typically unacceptable. The Executive may impose a condition requiring the independent adviser to the offeree to publicly state that the management arrangements are fair and reasonable in their opinion. Additionally, arrangements involving the offeror and management of the offeree company, holding more than 5% of the equity share capital will generally be required to be approved at a general meeting of independent shareholders. Convertible securities, warrants, options, and other subscription rights may influence the necessity of a general meeting, especially if they are exercisable during an offer. The Executive must be consulted in all relevant circumstances.

4. Disposal of offeree company assets

Disposal of offeree company assets to a shareholder that cannot be extended to all shareholders may be allowed by the Executive if an independent adviser publicly states that the terms are fair and reasonable, and the transaction is approved by shareholders not involved or interested in the transaction. The Executive will scrutinise post-offer asset sales to ensure no pre-arrangement was involved. Similar procedures may apply to other transactions with comparable issues, such as those with the offeree company involving offeror assets.

5. Repayment of shareholder loans

Repayment of shareholder loans by the offeree company or assignment of debt by the shareholder to the offeror or a person acting in concert may be considered a special deal. The Executive would typically consent to this type of repayment or assignment if they are conducted at arm's length on normal commercial terms, adhering to Note 4 of Rule 25 requirements.

Rule 26 -Mandatory Offer

Summary of the key points:

Rule 26 outlines the conditions under which a mandatory offer is required when acquiring voting rights in a company. A mandatory offer is required if a person or group acting in concert acquires 30% or more of a company's voting rights, or if they hold between 30% and 50% and acquire more than 2% additional voting rights within a 12month period. Mandatory offers must be extended to all classes of equity and voting non-equity share capital, and must be comparable across different classes. The Executive may grant waivers and should be consulted in complex cases. Persons acting in concert are presumed to be so unless proven otherwise, and changes in group composition can affect offer obligations. Banks involved in arm's length agreements for share acquisition loans are not typically considered concert parties. Shareholders voting together would not, in itself, lead to a designation of acting in concert. Directors opposing an offer should consult the Executive before acquiring voting rights that might trigger an obligation. Acquisitions within a concert group can trigger an offer obligation if they result in significant control changes meeting the thresholds set out under this Rule. For shareholders selling part of its shareholding, the Executive will consider the factors set out under this Rule to determine whether the purchaser is effectively able to exercise a significant degree of control over the retained voting rights to decide on whether the mandatory offer requirement is triggered. The "chain principle" may also require a mandatory offer if control of one company leads to control of another. Convertible securities, warrants, and options do not trigger an offer obligation unless they are exercised.

The "2% creeper" rule allows for limited acquisitions without triggering an offer, but dispositions can reset the baseline for this rule and the calculation of the percentage may be affected by placing and top-up transactions. Rule 26 also sets out details on the application of the "2% creeper" rule under different circumstances and requirements to comply with the restrictions.

Rule 26 also addresses dealings with allotted but unissued shares, borrowed or lent shares as well as dealings by discretionary fund managers and principal traders, employee benefit trusts.

Under Rule 26.2, mandatory offers must be conditional only on achieving more than 50% acceptances (combined with existing holdings), however are unconditional if the offeror already holds more than 50%. Dispensation from this requirement is rarely granted by the Executive and the Executive may require the offeror to undertake to conduct certain acts as set out under this Rule. Regulatory approvals must be obtained before triggering an offer and offers cannot be made conditional on such approvals.

In terms of the consideration, mandatory offers must be in cash or include a cash alternative, and the highest price paid in the relevant period must be considered in determining the consideration. Rule 26.4 also imposes restrictions on the exercise of offeree company voting rights by the offeror until the offer document is posted. Under Rule 26.5, directors selling shares that trigger an offer must ensure that the purchaser fulfills their obligations.

Waivers from mandatory offers can be granted in specific circumstances, these include whitewash procedures; rescue operations; inadvertent mistake; or placing and top-up transactions, if certain conditions are met, and the independence of placees are verified..

26.1 When mandatory offer required

A mandatory offer is required in the acquisition of voting rights in a company under the following situations:

- (a) if a person acquires 30% or more of a company's voting rights by a series of transactions, unless a waiver is granted by the Executive;
- **(b)** if 2 or more persons acting in concert collectively hold less than 30% of voting rights and any acquisition increases their collective holding to 30% or more;
- (c) if a person holding between 30% and 50% of voting rights must make a mandatory offer if they acquire additional rights that increase their holding by more than 2% from the lowest holding percentage of the person within a 12-month period prior to the date of the acquisition (including the acquisition date); or
- (d) if persons acting in concert collectively hold between 30% and 50% of voting rights and any one or more of them acquire additional rights increasing their collective holding by more than 2% from the lowest holding percentage within a 12-month period prior to the date of the acquisition (including the acquisition date).

Mandatory offers must be extended to holders of each class of equity share capital, regardless of whether it carries voting rights, and to holders of any class of voting non-equity share capital held by the acquirer or persons acting in concert.

Offers for different classes of equity share capital must be comparable, and the Executive should be consulted in advance.

Notes to Rule 26.1

1. Persons acting in concert

The definition of "acting in concert" includes a list of presumptions unless proven otherwise. Changes in the group composition may result in the formation of a new group or significant changes in the balance of the group. For example when a member of a concert party sells all or a significant portion of their shares to other existing members or a third party, the Executive may enforce the criteria in Rule 26.1, particularly Notes 6(a) and 7. In such cases, a general offer could be required even if no single member holds 30% or more of the shares.

2. Shareholders coming together to act in concert

Shareholders acting in concert must cooperate to obtain or consolidate control. If they independently acquire shares and later act together and their total shareholdings amount to 30% or more of the voting rights of the company, a mandatory offer is not typically required. However, after they started acting together, a mandatory offer will be required when:

- (a) their combined holdings were less than 30% and any member subsequently acquires more shares to reach 30% or more;
- **(b)** their combined holdings were between 30% and 50%, and they subsequently acquire more than 2% additional voting rights within 12 months.

3. Banks

An arm's length agreement by a shareholder with a bank for share acquisition loans does not usually make the bank a concert party, but exceptions may apply under class (9) of the definition of acting in concert.

4. Shareholders voting together

Shareholders voting together on resolutions are not automatically considered to be acting in concert, but this may be an indication of such.

5. Directors of a company

Directors opposing an offer, along with their advisers and their concert parties, should consult the Executive before acquiring voting rights that might trigger a mandatory offer obligation under Rule 26.

6. Acquisition of voting rights by members of a group acting in concert

The Executive recognises groups acting in concert as equivalent to a single person, but it also acknowledges that group membership and holdings can change, as such there may be cases where one member of the group acquires voting rights from another member of the group or a non-member and triggering the obligation to make a mandatory offer.

(a) If a member of a group acting in concert acquires voting rights from another group member, an offer obligation arises if the group's holdings are 30% or more, and the acquisition results in a single member holding 30% or more; or if the member already holds between 30% and 50% and acquires more than 2% additional voting rights within 12 months.

The Executive may waive the obligation to make a mandatory offer considering the following factors:

- 1. changes in group leadership or significant shifts in shareholding balance;
- 2. the price paid for the acquired shares; and
- 3. the relationship and duration of the concerted action among group members.

Waivers are typically granted if:

- the acquirer is part of a company group and acquires the voting rights from another group member; or
- **ii.** the acquirer is part of a group of individuals close relatives and related trusts, and companies controlled by him, his close relatives or related trusts, acquiring voting rights from within this group.
- (b) For acquisitions from non-members, a mandatory offer obligation arises if the group holds between 30% and 50% and acquires more than 2% in aggregate within 12 months. If the group holds over 50%, no obligations typically arise subject to Note 17 to Rule 26.1.
 - In situations similar to those under (a) above, the Executive may impose a mandatory offer obligation where a single member increases the holding to 30% or more, or if they already hold between 30% and 50%, by more than 2% in any 12-month period.
- (c) The price paid for the voting rights which are transferred within a group acting in concert may be relevant to the calculation of the highest price paid for voting rights, especially when all rights held by the group is transferred to the relevant member or when prices paid are significantly above market price.
- 7. Vendor of part only of a shareholding

When a shareholder sells only part of their holding, especially when under 30% of voting rights of the company is acquired and including when the purchaser is already a member of the concert group or when the purchaser joins the group, the Executive will consider whether the purchaser gains significant control over the retained voting rights, which could necessitate a general offer.

The Executive will also consider any related transactions between the purchaser, the vendor, and other concert party members. This includes cumulative transfers of voting rights over time or arrangements with similar effects, such as a purchaser underwriting a rights issue that the vendor declines or a share placement with the purchaser.

Factors influencing the Executive's judgment on "significant control" vary on a case by case basis and will generally include the following:

- (a) whether the vendor is an "insider", where if the vendor is not an "insider", it is less likely that there is significant control over the retained voting rights;
- **(b)** the price paid for voting rights, with a high price suggesting control over the entire holding;
- **(c)** negotiated options over retained voting rights, which may indicate control. The significance of the retained voting rights in terms of company capital or monetary value may imply independence;

(d) the position on managing the company, where the Executive notes that a vendor of a controlling holding might choose a purchaser aligned with their vision in terms of managing the company. A purchaser of a substantial holding in a company may seek board representation, and the vendor's support for this may be a condition of purchase. However, these factors alone do not necessitate a general offer unless there is other evidence of significant control over retained voting rights.

7A. Placing

The Executive will not consent to acquisitions of 30% or more if the purchaser arranges to place enough voting rights to reduce the holding below 30%. Purchasers acquiring just under 30% must ensure that they and any parties acting in concert do not collectively hold 30% or more, as this would trigger a mandatory offer obligation.

Other general interpretations

8. The chain principle

The "chain principle" applies when a person or concert group acquires control of one company which results in control over a second company due to the person, the concert group and first company's holdings directly or indirectly. An offer under Rule 26 is not typically required unless:

- (a) the holding in the second company is significant relative to the first company, and considering factors such as the assets and profits of the respective companies and the market capitalisations of the companies if they are listed. A 60% relative value will generally be considered significant; or
- **(b)** a main purpose of acquiring control over the first company was primarily to secure control over the second company.

The SFC should be consulted in cases potentially falling under this note to determine any obligations under Rule 26 arise. If calculations of relative values of assets and profits under (a) above yield anomalous results, further calculations referencing at least the 3 most recent audited financial periods and calculations for other alternative tests should be provided.

"Statutory control" under this Note refers to the degree of control over a subsidiary.

9. Triggering a mandatory offer during a voluntary offer

The Executive should be consulted if a proposed transaction may trigger the mandatory offer obligation during a voluntary offer by acquiring voting rights. An immediate announcement of the mandatory offer is required once the obligation is incurred. If no change in consideration occurs, the offeror must notify offeree company shareholders in writing about the new total holding, the acceptance condition as per Rule 26.2 is the only outstanding condition, and the offer's open period, which must be at least 14 days after the date of the offer document. Notes 3 and 4 to Rule 16.1 outline restrictions on incurring obligations under Rule 26 during the offer period.

10. Convertible securities, warrants and options

Generally, acquiring convertible securities, warrants, or options does not trigger a mandatory offer under Rule 26. However, exercising conversion or subscription rights or options is considered an acquisition of voting rights. The Executive will assess the granting and taking of options, considering factors like the timing of option exercise, any sale of part of the shareholdings by the grantor, the consideration for the option, and the relationship between parties which may indicate that effective control over the relevant voting rights has or may have passed to the recipient of the option. If effective control over voting rights is deemed to have passed, the option grant may be treated as an acquisition of voting rights.

Normally, an offer is not required after exercising convertible securities, warrants, options or other relevant subscription rights if independent shareholders approve the issuance in a general meeting as described in Note 1 on dispensations from Rule 26. Holders of conversion or subscription rights intending to exercise such rights to hold 30% or more of voting rights or more than 2% of the voting rights in any 12-month period must be aware of the implications under Rule 26. Rule 26 is triggered at the 30% threshold if convertible or subscription rights are currently exercisable. If these rights become exercisable during an offer period, Note 2 to Rule 6 and Note 3 to Rule 30.2 will apply. (Refer also to Note 18 to Rule 26.1.)

11. The "2% creeper – acquisitions and dispositions of voting rights during 12 month period

The "2% creeper" rule allows persons or concert groups holding 30% or more voting rights to acquire or dispose of additional voting rights within a 2% band above the greater of 30% or their lowest percentage holding in the previous 12 months without triggering a general offer obligation. Within this range, dispositions can be netted off against acquisitions.

12. The 2% creeper – effect of dispositions

If voting rights are disposed of outside the conditions specified in Note 11, the reduced holding establishes a new lowest percentage for the 2% creeper rule. A general offer obligation arises if the reduced holding is 30% or more and net acquisition increases the shareholding by more than 2% within 12 months; or if a holding reduced below 30% is increased back to 30% or more. Dispositions of voting rights cannot be netted against acquisitions, except as mentioned in Note 11.

13. The 2% creeper - effect of dilution

Subject to Note 14 below, dilution of voting rights through new share issuance is treated as a reduction by disposition.

14. The 2% creeper – placing and top-up transactions

In placing and top-up transactions as per Note 6 on dispensation from Rule 26, the lowest percentage holding is determined by the lower of the lowest percentage within the 12 months before or after the transaction. A placing shareholder will be treated the same way if the

top-up transaction does not trigger an offer under Rule 26 but meets the conditions under Notes 6 or 7 on dispensations from Rule 26.

If a placing shareholder conducted a whitewashed transaction in the 12 months before the placing and top-up, Note 15 to Rule 26.1 must be considered alongside this Note to determine their lowest shareholding percentage during that period.

15. The 2% creeper - effect of whitewash

When a mandatory offer obligation is waived in accordance with Note 1 on dispensation from Rule 26 through a vote of independent shareholders, the person or group is deemed to have a lowest percentage holding equal to their holding immediately after the whitewashed transaction. Subsequent acquisitions of voting rights by such persons or groups are subject to the 2% creeper rule, based on the lowest percentage holding in the 12 months ending on the acquisition date. For example, if a person or group increases their holding from 31% to 38% due to a whitewashed transaction, they are deemed to have a lowest percentage holding of 38% and can acquire up to 2% more within the next 12 months unless disposals reduce their holding below 38%.

16. The 2% creeper - voting rights acquired during mandatory offer

Following a mandatory offer that does not become unconditional, the offeror's lowest percentage holding is deemed to be their aggregate holding at the close of the offer period, including any voting rights acquired during the offer.

17. The 2% Creeper - holding between 48% and 50%

The 2% creeper restrictions under Rule 26.1(c) and (d) applies to persons or groups holding 50% or less voting rights in the preceding 12-month period. As such a person or concert group holding 49% voting rights cannot acquire more than 2% of the offeree company's voting rights during the following 12 months.

18. Allotted but unissued shares

Allotted but unissued shares, such as those under a rights issue, are also considered in these calculations. If shares are represented by renounceable letters of allotment, the Executive should be consulted.

19. Discretionary fund managers and principal traders

Dealings by discretionary fund managers and principal traders connected with an offeror or the offeree company are also subject to Rule 21.6.

20. Employee benefit trusts

The Executive must be consulted before any acquisition of shares by directors and shareholders acting in concert with the directors and trustees of employee benefit trusts (EBTs) if the acquisition results in holdings equaling or exceeding 30% of voting rights, or if holdings already exceed 30% and will increase further. Consultation is also required if a

shareholder or concert group holding 30% to 50% of voting rights proposes that an EBT acquires shares. The establishment and operation of an EBT do not in itself automatically presume concerted action with the director, controlling shareholders, and concert group but the Executive will consider various factors to determine whether the trustees are acting in concert with the directors and/or controlling shareholder. Factors include trustee identities; remuneration committee composition; funding arrangements; share capital percentage held by the EBT; shares held for director awards; share held that are in excess of satisfying existing awards; vendor of the shares, acquisition price and methods; established policy or practice by the trustees on acquiring shares or exercising votes held by the EBT; whether the directors are presumed to be acting in concert and relationships between controlling shareholders, directors, and trustees. This note does not apply to shares within the EBT controlled by beneficiaries.

21. Borrowed or lent shares

For borrowed or lent shares, a person is treated as holding voting rights unless the borrowed shares are on-lent or sold. Consultation with the Executive is required before acquiring or borrowing shares which, combined with existing interests, reach the thresholds under the mandatory offer obligation under Rule 26. If a mandatory offer is triggered, the Executive will determine the treatment of borrowed or lent shares concerning the acceptance condition.

26.2 Conditions

Except with the consent of the Executive:

- (a) offers under Rule 26 must be conditional only on the offeror receiving acceptances for voting rights that, combined with those acquired before or during the offer, will result in the offeror and its concert parties holding more than 50% of the voting rights; and
- **(b)** the making of acquisitions requiring an offer under Rule 26 cannot depend on shareholder resolutions or other conditions, consents, or arrangements.

Notes to Rule 26.2

1. When more than 50% is held

An offer should be unconditional if the offeror and concert parties already hold more than 50% of voting rights before the offer.

2. When dispensations may be granted

The Executive will only grant dispensations in exceptional circumstances, such as when cash is provided wholly or in part through a cash underwritten alternative conditional on obtaining a listing for new shares. It is generally required to include a statement in the announcement of the offer and the offer document stating that if the acceptance condition is fulfilled but the listing condition is not within the time limit causing the offer to lapse:

i. the offeror must make a new cash offer at a price required by Rule 26; and

ii. until the new offer document is posted, the offeror and its concert parties can only exercise less than 30% of the voting rights of the offeree company.

The offeror must seek a listing for new shares with all due diligence when a dispensation is granted.

3. Acceptance condition

Notes to Rule 30.2 apply to offers under Rule 26.

If an offer under Rule 26 lapses because a purchase not being counted due to Note 7 to Rule 30.2, and the purchase is later completed, the Executive must be consulted for appropriate actions, such as making a new offer or reducing the offeror's holding.

4. Regulatory approvals

Acquisitions of voting rights that would require an offer under Rule 26 must obtain prior regulatory approval. Pursuant to 26.2, offers under Rule 26 cannot be conditional on obtaining regulatory approval and potential offerors must secure such approval before triggering a mandatory offer.

Failure to obtain necessary regulatory approval before triggering a mandatory offer constitutes a breach, subjecting the offeror to possible disciplinary action.

26.3 Consideration

- (a) Offers must be in cash or include a cash alternative, at no less than the highest price paid by the offeror or concert parties for shares of the same class during the offer period and within 6 months prior to the start of the offer period. The cash offer or alternative must remain open for at least 14 days after the offer becomes or is declared unconditional. Consultations with the Executive is required where the offer involves more than one class of equity share capital.
- **(b)** The Executive's consent is required if the offeror believes the highest price should not apply in a specific case.

Notes to Rule 26.3

1. Nature of consideration

When voting rights are acquired for non-cash consideration, the offer must still be in cash or include a cash alternative of equal value, determined by an independent valuation. Significant acquisitions in exchange for securities may require offering those securities to all shareholders pursuant to General Principle 1, along with a cash offer, and the Executive should be consulted under these situations.

2. Calculation of the price

(a) In calculating the price paid, stamp duty and broker's commission should be excluded.

- **(b)** When voting rights are acquired in exchange for listed securities, the price is typically determined by the weighted average traded price of board lots on the acquisition date, excluding special bargains and odd lots.
- (c) For voting rights acquired through conversion or exercise of convertible securities, warrants, options, or other subscription rights, the price is generally based on the purchase price of the convertible securities, warrants or options and the conversion or exercise terms. If these were privately issued or sold, the Executive may also consider the weighted average traded price of the relevant shares on the notice date of conversion or subscription.

The Executive should be consulted in advance for acquisitions involving listed securities or convertible securities, securities, warrants, options or other subscription rights.

3. Dividends

Reference is made to Note 11 to Rule 23.1.

4. Dispensations from highest price

The Executive may consider adjusting the highest price for an offer based on factors such as the size and timing of purchases, the offeree company's board's attitude, high-priced purchases from directors or connected persons, and the number of shares purchased in the past 12 months.

26.4 Restrictions on control by offeror

Unless with the Executive's consent, an offeror or its concert parties cannot appoint nominees to the offeree company's or its subsidiaries' board or exercise voting rights until the offer document is posted.

Notes to Rule 26.4

Rule 26.4 references Rule 7, which limits the resignation of offeree company directors until the offer's first closing date or when it becomes unconditional, whichever is later.

26.5 Obligations of directors selling shares

Directors, along with their close relatives, related trusts, and companies they control together with their close relatives or related trusts, must ensure that purchasers undertake to fulfill obligations under Rule 26 when they sell shares to a purchaser and the mandatory offer requirement is triggered as a result of the sale.

Notes on dispensations from Rule 26

1. The "Whitewash" procedure allows for a waiver of the mandatory offer obligation if certain conditions are met.

A whitewash waiver can be granted if the transaction involving issuance of new securities as consideration for an acquisition, or a cash subscription, or the taking of a scrip dividend,

which would otherwise necessitate a mandatory offer, and the waiver are approved by at least 75% and more than 50% respectively of the independent votes at a shareholders' meeting. "Independent vote" refers to votes by shareholders not involved or interested in the transaction. The mandatory offer requirement may also be waived in cases involving share underwriting if approved by independent shareholders. The Executive should be consulted if an underwriter unexpectedly incurs an obligation for example due to a sub-underwriter's failure.

Full disclosure of potential voting rights holdings must be provided to shareholders in the document relation to the issue of new securities, along with independent advice on the proposals and a statement of the Executive's agreement to waive the mandatory offer obligation.

Note 15 to Rule 26.1 specifies that if a mandatory offer obligation is waived through an independent shareholder vote, the involved parties are deemed to have a lowest holding percentage equal to their holding immediately after the whitewashed transaction. Any further acquisition of voting rights is subject to the 2% creeper rule under Rule 26.1 based on the lowest percentage holding in the 12 month period prior to the completion of the acquisition.

Although a new securities issue is conditional upon obtaining approval from a majority of independent shareholders:

- i. a waiver is typically not granted if the person receiving new securities, or anyone acting in concert with them, has acquired voting rights in the company within 6 months prior to the announcement of the proposals but after to negotiations or agreements with directors of the company on the proposed issue of new shares, unless these acquisitions were fully disclosed in the whitewash circular; and
- **ii.** waivers are also not granted or invalidated if, without the Executive's prior consent, any acquisitions or disposals of voting rights occur between the announcement of the proposals and the completion of the subscription.

After the shareholder meeting in relation to the proposals, the offeree company must announce the meeting's results, including the number and percentage of voting rights the potential controlling shareholders have acquired.

If the final controlling shareholding depends on underwriting results, the offeree company must announce the number of shares and percentage of voting rights held by controlling shareholders after the issuance of new securities.

2. Enforcement of security for a loan, receives, etc.

The Executive may waive the mandatory offer requirement if a shareholding is charged to a bank or lending institution on arm's length in the ordinary course of business as security for a loan, and enforcement of the security would trigger the Rule 26 mandatory offer obligation, provided that the security was not given when the lender reasonably believes that

enforcement was likely. If voting rights are transferred to a lender without enforcement of security, the Executive must be convinced that such arrangements are necessary to preserve the lender's security and the proviso above will be considered. Rule 26 will apply to the lender if it wishes to sell all or part of its shareholding after enforcement of the security.

Rule 26 applies to purchasers from receivers or liquidators who control 30% or more of the voting rights of another company but not to the receiver or liquidator themselves.

3. Rescue operations

The Executive may waive Rule 26 requirements when the company is in severe financial distress and the only way to save the company is by an urgent rescue operation involving the issuance of new securities without prior approval of the independent shareholders or involves transactions which would trigger Rule 26 requirements for the rescuer. The Executive will put weight on the views of the directors and advisers of the potential offeree company.

Waivers are unlikely if the rescue is for a major shareholder rather than the company itself, as the shareholder's situation may not affect other shareholders.

The Executive must be convinced of the rescue's urgency and impracticality of obtaining independent shareholder approval under Note 1 on dispensations from Rule 26. If urgency is not proven, an independent vote may be required as a condition for a waiver. The Executive will consider if the rescue proposal is fair to existing shareholders and if they can participate on similar terms as the rescuer so far as practicable. Waiver applications should be submitted as early as possible.

4. Inadvertent mistake

If an obligation to make an offer arises from an inadvertent mistake, the Executive may not require a mandatory offer if sufficient voting rights are disposed of quickly within the time limit to unrelated parties.

5. Balancing block: where 50% will not accept

In cases where a person or concert group acquires 30% or more voting rights while another person or concert group holds 30% or more voting rights of that company, a general offer may be waived if:

- (a) a single person with 50% or more voting rights states that they will not accept the mandatory offer; or
- **(b)** written confirmation is provided to the Executive from holders of 50% or more voting rights that they will not accept the offer.

6. Placing and top-up transactions

A waiver is typically granted when a shareholder and its concert parties, holding 50% or less of a company's voting rights, places part of their holding with independent persons (refer to

Note 7 on dispensation from Rule 26 below) and subscribes for new shares equivalent to the placed shares at a similar price after accounting for transaction expenses as soon as practicable. The waiver is necessary even if the placing and top-up occur simultaneously through inter-conditional or other agreements. For the 2% creeper rule, the shareholder's lowest percentage holding will be the lower of the lowest percentage held in the 12 months before or immediately after the relevant placing and top-up occur transaction. No waiver is needed if the shareholder and concerted persons have continuously held more than 50% of voting rights for at least 12 months before the relevant transaction.

7. Verification of independence of placees

When disposition or placement of voting rights to independent persons is required to comply with a Rule or obtain a waiver, the vendor must not arrange placements with concerted persons. The vendor's involvement in selecting placees should be limited to due diligence enquiries by placing agents and financial advisers regarding the independence of placees only. Financial advisers, placing agents, and acquirers are responsible to ensure and confirm the acquirer's independence from the vendor and must take steps to verify their independence. The confirmation should set out details of the involvement of the vendor of voting rights during the placing and the placee list with identities of the places should be sent to the Executive.

For placing and top-up transactions, the Executive will generally rely heavily on the confirmations provided by the financial adviser, placing agent and acquirer of the voting rights when deciding on whether to grant a waiver. The Executive can still enquire about the independence of the acquirer after completion of the relevant transactions. If the acquirer is found to have acted in concert with the vendor, any granted waiver will typically be invalidated and may require making of a mandatory general offer under Rule 26.

The Executive retains the discretion to investigate the independence of the acquirer of voting rights before granting a waiver if deemed necessary.

Rule 27 -Prompt registration of transfers

Summary of the key points:

Rule 27 mandates the prompt registration of transfers by the board, officials, and registrars of an offeree company during an offer period.

The responsibility for ensuring prompt registration of transfers during the offer period lies with the board, officials, and registrars of the offeree company. The purpose of this rule is to enable shareholders to freely exercise their voting and other rights during the offer period.

Rule 28 -Partial offers

Summary of the key points:

Rule 28 addresses partial offers stating that Executive consent is required for partial offers, and this consent is typically granted if the offeror and concert parties will not hold 30% or more of voting rights after the offer, or if they already hold over 50% and the offer is to increase up to 75% or the percentage permitted by Listing Rules. For acquisitions before the offer, consent is usually not granted if the offeror or concert parties acquired voting rights in the 6 months prior to the offer period. For acquisitions during and after the offer, the offeror and concert parties cannot acquire voting rights during the offer period. After a successful offer, Executive consent is required to acquire voting rights within 12 months after the end of the offer period if control is obtained or consolidated. Rule 28.4 states the final closing day must be extended by 14 days if the acceptances level is met and the offer is declared unconditional as to acceptance, but this final closing day cannot be further extended. This Rule also mandates that partial offers must be open for a minimum of 21 days, with specific conditions for extending closing dates. Offers resulting in 30% or more voting rights require independent shareholder approval, unless one independent shareholder holds over 50% and approves the offer. Offers potentially leading to over 50% control must clearly state this in the offer document. Partial offers must specify the exact number of shares and cannot be unconditional unless that number is accepted. Offers must be made to all shareholders, and excess shares must be accepted from each shareholder in the same proportion as the number tendered up to the total number of shares offered. Comparable offers are required for different classes of equity and convertible securities if the offeror could hold 30% or more voting rights. Cross-reference is also made to Rule 20.1(b) in relation to the timing of acquisition and payment. This Rule also includes guidance on minimising odd lot shareholdings and restrictions on exempt principal traders connected with the offeror or offeree company.

28.1 Executive's consent required

Executive consent is mandatory for any partial offer. Consent is typically granted if the offeror and its concert parties will not hold 30% or more of the voting rights after the offer, or if they already hold over 50% of voting rights and the offer will not increase their holding to more than 75%, or a higher percentage allowed by Listing Rules.

28.2 Acquisitions before the offer

If a partial offer could lead to obtaining or consolidating control as per Rule 26.1, consent is usually denied if the offeror or its concert parties acquired voting rights in the 6 months preceding the offer period.

28.3 Acquisitions during and after the offer

During the offer period of a partial offer, the offeror and its concert parties are prohibited from acquiring voting rights in the offeree company. After a successful partial offer where the offeror obtains or consolidates control as per Rule 26.1, all persons acting in concert with the offeror during or after the partial offer may not acquire additional voting rights within 12 months post-offer, unless the Executive's consent is obtained. Rule 31.3 is not applicable to partial offers, but Rule 31.2 should be considered.

Notes to Rule 28.3

Discretionary fund managers and principal traders connected with an offeror are subject to Rule 21.6.

28.4 No Extension of closing date

Subject to this Rule, Rule 15 generally applies to partial offers regarding the closing date. If acceptances meet or exceed the specified number of shares in the Rule 28.7 offer document, the offeror must declare the offer unconditional as to acceptances and extend the closing date by 14 days, with no further extensions allowed.

If the acceptance condition is met before the first closing day, the offeror must declare the offer unconditional as to acceptances on that day provided that the offer must remain open for at least 14 days, with no extension of the final closing day beyond the 14th day after the first closing day.

If the acceptance condition is met after the first closing day during an extended offer period, the offeror must declare the partial offer unconditional as to acceptances on that day, and extend the final closing day to 14 days thereafter.

The offer document must prominently reference the requirements of Rule 28.4 and Rule 28.4 shall apply regardless of whether approval under Rule 28.5 has been obtained.

Note to Rule 28.4

Approval under Rule 28.5

A partial offer must remain open for at least 21 days. If the offer is subject to Rule 28.5 approval, this condition is not part of the acceptance condition. If sufficient acceptances are received but not enough shareholder approval under Rule 28.5 by the first closing day, the offer can only be extended for 14 more days, which will be the final closing day. No further extensions are allowed, and the offer will lapse if approval under Rule 28.5 is not obtained by then.

28.5 Offer for 30% or more requires independent approval

Any offer potentially resulting in the offeror holding 30% or more of voting rights and does not fall within Rule 28.1(b) must be conditional on acceptances and receiving approval from shareholders (by adding a separate box on the acceptance form) holding over 50% of the

voting rights not held by the offeror and its concert parties. This requirement can be waived if one independent shareholder holding over 50% of the voting rights indicates approval.

28.6 Control position warning

The offer document must clearly state if a partial offer could result in the offeror holding more than 50% of voting rights of the offeree company, and that the offeror may, subject to Rule 28.3, acquire more shares without a general offer obligation if the offer succeeds.

28.7 Precise number of shares to be stated

A partial offer must be for a precisely stated number of shares, and it cannot be declared unconditional unless acceptances meet or exceed that number.

28.8 Pro rata entitlement

Partial offers must be extended to all shareholders of the relevant class, and arrangements must be made for shareholders who accept the offer for all of their holdings. Any shares tendered beyond this percentage must be accepted proportionally by the offeror with reference to the number tendered to achieve the total number of shares offered.

28.9 Comparable offer

If an offer could result in the offeror holding 30% or more of voting rights in a company with multiple classes of equity share capital, a comparable offer must be made for each class.

28.10 Comparable offers for convertible securities, warrants, etc.

If an offer could lead to the offeror holding 30% or more of voting rights and the company has convertible securities, warrants, options, or outstanding subscription rights, a comparable offer or proposal must be made to holders of these securities and requirements under Rule 13 will be applicable.

Notes to Rule 28:

- 1. Reference is made to Rule 20.1(b), which details the timing for acquisition and payment for shares regarding acceptances in a partial offer.
- 2. The offeror should minimise odd lot shareholdings by arranging its acceptance procedures for partial offers as much as practicable.
- 3. The restrictions under Rules 35.3 and 35.4 apply to exempt principal traders in partial offers, and securities held by an exempt principal trader connect with the offeror (a) cannot be assented to the offer until it is unconditional as to acceptances; and (b) are prohibited from voting their securities on any matter relating to the offer, including Rule 28.5 offer approvals.

Rule 29 -Proxies

Summary of the key points:

Rule 29 specifies that an offeror cannot compel a shareholder to appoint a specific person as their proxy to vote or exercise rights related to their shares unless the conditions set out in detail below are met. These conditions must also be clearly stated in the offer document.

An offeror cannot mandate a shareholder to appoint a specific person as a proxy to vote, exercise rights related to shares or take other action related to the shares as a term of acceptance of an offer, unless the appointment is based on the following terms, which must be included in the offer document:

- (a) the proxy cannot vote, exercise rights, or take action unless the offer is unconditional, or (when the voting is by proxy) will become unconditional or lapse immediately based on the relevant resolution's outcome;
- **(b)** votes should be cast to satisfy any outstanding conditions of the offer as far as possible, where applicable;
- (c) the proxy appointment becomes invalid if the acceptance of the offer is withdrawn; and
- (d) the appointment is only applicable to shares that have been assented to the offer.

Rule 30 -Conditions

Summary of the key points:

Rule 30 outlines the requirements and restrictions on conditions in offers. Offers should not be subject to conditions dependent on judgments by the offeror or offeree company, or conditions within their control. The Executive may allow some subjectivity in conditions, especially when official authorisations are involved or when conditions depend on verified statements or estimates. An offeror should not invoke any condition, other than the acceptance condition, to cause an offer to lapse unless the circumstances leading to the invocation of the condition is materially significant.

When securities are offered as consideration and intended for listing, the offer must be conditional on obtaining Stock Exchange approval for the listing. Offers, except partial offers under Rule 28, must be conditional on the offeror receiving acceptances for shares resulting in the offeror and its concert parties holding more than 50% voting rights. Voluntary offers can have higher acceptance levels, while mandatory offers under Rule 26 should be unconditional if the offeror already holds more than 50% voting rights.

Acceptances must be received by the offeror's agent by the deadline and be accompanied by necessary documentation. The offeror's receiving agent must issue a certificate confirming compliance with acceptance conditions before an offer is declared unconditional.

The Executive should be consulted regarding voting rights attached to convertible securities, warrants, or options acquired during the offer period. The Executive may allow offers to be subject to less than 50% acceptance in exceptional circumstances. All shares with voting rights issued before the offer becomes unconditional must be considered for the acceptance condition. Purchases of shares by the offeror or concert parties can count towards the acceptance condition if they are made through the Stock Exchange in the normal course of trading securities without prearrangement. However, borrowed shares cannot count towards the acceptance condition without the Executive's consent.

30.1 Conditions to an offer

Offers should not typically be subject to conditions reliant on the judgment of the offeror or offeree company, or conditions that are within their control.

Notes to Rule 30.1

1. An element of subjectivity

The Executive may allow some subjectivity in conditions under special circumstances when it is not practicable to set out all the factors that may affect the fulfilment of a condition,

particularly when official authorisations are involved and obtaining such authorisations require additional material obligations for the offeror, or when the condition relate to statements or estimates being verified.

2. Invoking conditions

An offeror should not invoke any condition, other than the acceptance condition, to cause an offer to lapse unless the circumstances disrupting the fulfilment of the condition is materially significant to the offeror under the context of the offer.

3. Listing conditions

When securities are offered as consideration and intended to be listed on the Stock Exchange, the listing condition must ensure it can only be satisfied with the Stock Exchange's approval to admit the securities to listing, unless the Executive's consent is obtained.

30.2Acceptance condition

All offers, except partial offers under Rule 28, must be conditional on the offeror receiving acceptances that result in the offeror and its concert parties holding more than 50% of the voting rights of the offeree company, unless the Executive consents otherwise.

Voluntary offers can be conditional on a higher acceptance level.

Mandatory offers under Rule 26 must not have conditions regarding minimum or maximum acceptance levels and should be unconditional if the offeror and its concert parties already hold more than 50% of the voting rights before the offer.

Notes to Rule 30.2

1. Acceptance

Acceptances for an offer must meet specific criteria to be counted towards fulfilling an acceptance condition, including that:

- (a) acceptances must be received by the offeror's receiving agent by the deadline specified in the offeror's document or announcement, and the receiving agent must record the receipt of the acceptance and any required documents under this Note;
- $\begin{tabular}{ll} \textbf{(b)} & \textbf{The acceptance form is duly completed and is :} \end{tabular}$
 - accompanied by share certificates or other documents (if the share certificates are not in the name of the accepting shareholder such as stamped transfer to the acceptor executed by the registered holder) establishing the acceptor's right to become the registered holder of the shares;
 - **ii.** from a registered holder or their personal representatives up to the amount of the registered holding and do not fall under other subparagraph of this paragraph; or

iii. certified by the offeree company's registrar or the Stock Exchange.

If the acceptance form is executed by someone other than the registered holder, evidence of authority, such as a grant of probate or a certified power of attorney, must be provided.

2. Offeror's receiving agent's certificate

Before an offer can be declared unconditional as to acceptances, the offeror's receiving agent must issue a certificate to the offeror or its financial advisor stating the number of compliant acceptances and shares acquired outside of Note 8 to Rule 30.2.

Copies of the receiving agent's certificate must be sent to the Executive and the offeree company's financial adviser by the offeror or its financial adviser promptly after issuance.

3. Convertible securities, warrants and options

The Executive should be consulted regarding the counting of voting rights attached to shares issuable upon the exercise of conversion or subscription rights related to convertible securities, warrants, or options acquired during the offer period. The Executive will generally allow an offeror to count voting rights from convertible or subscription rights towards the acceptance condition if the offeror discloses this intention in the announcement and offer document and takes all necessary steps to exercise these rights. These voting rights would be seen as being outstanding for calculating the acceptance condition.

4. Information to offeror during offer period and extension of offer to new shares

Information regarding the offeree company's share capital supplied to an offeror and the offeror's obligations concerning new shares is detailed in the Notes to Rule 6.

5. Dispensation from 50% acceptance condition

The Executive may allow an offer to be subject to acceptance by holders of shares with less than 50% of the voting rights in exceptional circumstances.

6. New shares

For the acceptance condition, the offeror must consider all shares with voting rights that are unconditionally allotted or issued before the offer becomes or is declared unconditional, including those subject to conversion or subscription rights. The offeror should consult the Executive when, for instance, the shares are allotted in renounceable form (provisionally or not) due to the rights issue.

7. Purchases

Purchases of shares by the offeror or those acting in concert with the offeror can count towards fulfilling an acceptance condition if the purchase is made through the Stock Exchange in the normal course of trading without prearrangement or collusion between the parties to the transaction or their agents. The purchase can be counted if it is fully completed and settled. If not fully settled in according with the rules of the Stock Exchange, the Executive may require other actions by the offeror and/or its concert parties, for example issuing a correcting announcement.

Note 8 applies when the offeror or any concert party has borrowed shares of the offeree company.

8. Borrowed shares

Subject to Note 21 to Rule 26.1, borrowed shares cannot be counted towards fulfilling an acceptance condition without the Executive's consent.

Rule 31 – Restrictions following offers and possible offers

Summary of the key points:

Rule 31 sets out the restrictions following offers and possible offers, which imposes a 12-month restriction period for an offeror and its concert parties from making a new offer or acquiring voting rights in the offeree company if a previous offer was withdrawn or lapsed without becoming unconditional. This restriction can be reduced to 6 months if an announcement was made indicating a possible offer without a firm intention or when a person makes an announcement that he does not intend to make an offer for the company. This Rule extends these restrictions to partial offers, specifying conditions based on the percentage of voting rights involved. This Rule also provides exceptions where the Executive may grant consent for a new offer, such as when the new offer is recommended by the offeree company's board or the new offer follows an announcement of an offer by a third-party offer. The 12-month restriction also applies to the offeror in cases of unsuccessful privatisation offers. Transactions condition on not incurring a general offer obligation will also be subject to the restrictions under Rule 31.1.

This Rule also imposes a 6-month delay on acquiring shares at a higher price than a previous unconditional offer, unless consent is obtained. It clarifies that new share issues or acquisitions of convertible securities may require consultation with the Executive. Rule 31.4 restricts a competing offeror, whose offer has lapsed, from acquiring shares on better terms until other competing offers has either been declared unconditional in all respects or has itself lapsed. This Rule also mandates that once an offer becomes unconditional, the offeree board must cooperate in convening a general meeting if requisitioned by the offeror to appoint directors, and refrain from certain actions without shareholder or offeror consent.

31.1 Delay before subsequent offer

- (a) If an offer has been announced or posted but not declared unconditional and is then withdrawn or lapses, the offeror and any concert parties during the course of the offer or subsequently acts in concert with the offeror cannot, within 12 months, announce another offer for the offeree company (including a partial offer) or acquire voting rights that would obligate them to make an offer under Rule 26. The 12-month restriction applies unless the Executive consents otherwise.
- **(b)** The specified restrictions under Rule 31.1 may also be imposed for 6 months if a person makes an announcement that suggests or confirms the potential for an offer without formally declaring one and then fails to clarify their intention to either proceed with or abandon the offer within a reasonable timeframe.

(c) If a person announces they do not intend to make an offer, the 6-month restriction applies unless there is a material change in circumstances or a specified event occurs that allows the announcement to be set aside. The announcement must be clear and unambiguous. If the person wishes to include any reservations allowing them to later set aside the statement, they must consult the Executive before issuing the announcement.

31.2 Partial offers

- (a) For partial offers, the 12-month restriction under Rule 31.1(a) applies if the offer is for 30% to 50% of voting rights regardless of whether it becomes or is declared unconditional. For offers that became or has been declared unconditional, the 12-months starts from the date it becomes unconditional. The restriction also applies to offers for more than 50% of voting rights that do not become unconditional and for less than 30% of voting rights that do not become unconditional.
- **(b)** Restrictions under Rule 31.1(b) apply to partial offers resulting in a holding of less than 30% of voting rights which has become or been declared wholly unconditional.
- **(c)** Restrictions under Rule 31.1(c) apply when a person announces they do not intend to make a partial offer for a company.

Notes to Rules 31.1 and 31.2

- 1. The Executive may grant consent for new offers under Rules 31.1 and 31.2 if:
- (a) The restrictions may be waived if the new offer is recommended by the offeree company's board and the offeror is not a director, substantial shareholder, or acting in concert with such persons. However, consent will typically be denied within 3 months of a prior offer lapsing if the offeror was restricted from revising or extending that offer due to a no-increase or no-extension statement;
- (b) the new offer follows a third-party offer announcement for the offeree company; or
- **(c)** the new offer follows a "whitewash" proposal or reverse takeover announcement by the offeree company that has not failed, lapsed, or been withdrawn.

2. Rule 31.1(b)

Rule 31.1(b) applies regardless of the announcement's wording or reason. For instance, even a statement such as "considering options" may fall under this rule if those options could reasonably include making an offer. However, the Executive expects to apply this provision sparingly, typically only when the potential offeree company demonstrates that the business harm from uncertainty outweighs the shareholders' loss of a potential offer opportunity.

The determination of "a reasonable time" for making an offer is based on the circumstances, including the offeror's preparation stage at the announcement time.

3. Privatisation offers

In unsuccessful privatisation offers, the offeror is generally barred from purchasing shares in the offeree company within 12 months of the lapse of the offer if it would lead to delisting of the offeree company, unless this has been approved by shareholders per the Listing Rules.

4. Transactions conditional on not incurring a general offer obligation

If a person announces a transaction with a condition that a general offer obligation must not be triggered:

- (a) Rule 31.1(c) applies if the person does not reserve the right to waive the condition;
- **(b)** Rule 31.1(a) applies if the person reserves the right to waive the condition and does waive it, incurring an offer obligation; or
- (c) Rule 31.1(c) applies if the person reserves the right to waive the condition but does not waive it.

31.3 6 months delay before acquisition above offer price

Without the Executive's consent, during the period within 6 months after the end of the offer period of an offer which was unconditional at the time of publication of the offer document or after the publication of the offer document, persons and its concert parties holding more than 50% of voting rights may not make a second offer or acquire shares from any shareholder of the company at a higher price than the previous offer. The value of a securities exchange offer is calculated from the later of the offer document date or the date the offer became unconditional.

Notes to Rule 31.3

1. Issue of new shares

Issuing new shares by placing, subscription, or in exchange for assets does not require Executive consent.

2. Convertible securities, warrants and options

Under Rule 31.3, the acquisition of convertible securities, warrants, or options may be deemed relevant if their conversion or exercise price (based on acquisition cost and applicable terms) exceeds the original offer price. In such cases, prior consultation with the Executive is required. Additionally, the exercise or conversion of these instruments will be treated as a share acquisition for the purposes of this rule.

31.4 Restrictions on dealings by a competing offeror whose offer has lapsed

Dealings to acquire shares in the offeree company by a competing offeror and its concert parties whose offer has lapsed cannot be on better terms than the lapsed offer until the other competing offers are declared unconditional in all respects or has itself lapsed,

except with the Executive's consent. The value of the lapsed offer will be calculated on the day the offer lapsed.

31.5 Requisitioning shareholder meetings after an offer becomes unconditional in all respects

Once an offeror's bid becomes unconditional in all respects, they may requisition a general meeting to appoint directors to the offeree company.

- The offeree board is required to fully cooperate and convene the general meeting as soon as possible.
- ii. The offeree board is prohibited from taking or agreeing to take any actions listed in paragraphs (a) to (e) of Rule 4 without shareholder approval or the offeror's consent after the offer period ends and until the general meeting concludes.

Rule 32 -Share buy-backs

Summary of the key points:

Rule 32 addresses the implications of share buy-backs under the Takeovers Code. An increase in a shareholder's voting rights due to a share buy-back is considered an acquisition of voting rights, potentially obligating the shareholder to make a mandatory offer under Rule 26. The Executive should be consulted at an early stage if a shareholder or group acting in concert gains control through a share buy-back. For a share buy-back by general offer or an off-market share buy-back, a waiver from the mandatory offer requirement may be treated as a whitewash waiver application, which is typically granted if the implications are disclosed in the offer document, the buy-back is approved by shareholders not obligated to make a mandatory offer, and procedures similar to those in Note 1 on dispensations from Rule 26 are followed.

Responsibility for making an offer falls on the principal members of a group acting in concert if a dispensation is not granted. A shareholder exceeding the mandatory offer requirement threshold due to a company's share buy-back is not usually obligated to make an offer unless they are acting in concert with directors. During an offer, the offeree company cannot redeem or buy back securities without shareholder approval, unless under a pre-existing contract. Public disclosure of securities dealings, including share buy-backs, is required, and the offeree board circular must provide details of recent buy-backs. For securities exchange offers, the offer document must also disclose details in relation to securities redeemed or bought back by the offeror company within 6 months before the offer period.

32.1 Code implications of share buy-backs

An increase in a shareholder's proportionate interest in voting rights due to a share buy-back is considered an acquisition of voting rights, potentially triggering a mandatory offer requirement under Rule 26 depending on the circumstances. Shareholders or groups acting in concert who gain control through a buy-back must consult the Executive at an early stage. For general offer or off-market share buy-backs, a waiver from the mandatory offer requirement can be sought which will be treated similarly to a whitewash waiver application.

The Executive typically grants a waiver if:

- (a) the implications of the share buy-back are disclosed in the offer document;
- **(b)** the buy-back is approved by shareholders not obligated to make a mandatory offer in accordance with the approval requirements under the Share Buy-backs Code;
- (c) procedures similar to those in Note 1 on dispensations from Rule 26 and Schedule VI are followed.

For Rule 22, share buy-backs are included as dealings in relevant securities.

Notes to Rule 32.1

1. Responsibility for making an offer

If a mandatory offer under Rule 26 and the offer obligation under Rule 32.1 arises and no dispensation is granted, the primary responsibility to make the offer lies with the principal members or members of the concert group obtaining or consolidating control through the share buy-back, not the company itself. Directors and principal shareholders may be presumed to act in concert unless proven otherwise.

2. A shareholder not acting in concert with the directors

A shareholder who exceeds the limits set in Rule 26.1 due to a company's redemption or buy-back of its own shares will generally not be required to make a mandatory offer unless they are a director, have appointed a board representative, or are acting in concert with any director. There is no presumption that all directors are automatically acting in concert solely because of a proposed share redemption or buy-back or making the decision to seek shareholder approval for the proposed share redemption or buy-back. However, if a shareholder (or any member of a concert party) buys shares when having a reasonable belief that such a transaction was likely, the exception does not apply, and a mandatory offer may be required.

32.2 Redemption or buy-back of securities by the offeree company

(a) Shareholders' approval

During an offer, or the board of the offeree has reasons to believe that an offer is anticipated, the offeree company cannot redeem or buy-back its securities without shareholder approval at a general meeting, unless a prior contract exists. The meeting notice must include information about the offer or anticipated offer. If no formal contract exists but there are obligations or special circumstances, the Executive's consent is required to proceed without a shareholders' meeting.

(b) Public disclosure

Under Rule 22, redemption or buy-back of, or taking or exercising an option over relevant securities by the offeree company must be publicly disclosed, including the total remaining securities of the relevant class after the redemption or buy-back.

(c) Disclosure in the offeree board circular

The offeree board circular must disclose details of any redemptions or buy-backs within 6 months before the offer period ending on the latest practicable date of the document, including the amount of relevant securities involved, dates and prices.

32.3 Redemption or buy-back of securities by the offeror company

In a securities exchange offer, for the offeror, the offer document must disclose details of any securities of the offeror redeemed or bought back within 6 months before the offer period, including the amount of relevant securities of the offeror involved dates and prices.

Rule 33 – Inducement fees, break fees and standstill agreements

Summary of the key points:

Rule 33 addresses inducement fees, break fees, and standstill agreements in offers. Inducement or break fees generally involve a cash sum payable by the offeree company if certain events prevent or cause the offer to fail, such as a higher competing offer. Inducement fees or break fees must be minimal, typically not exceeding 1% of the offer value. The board of the offeree company and its financial adviser must confirm in writing to the Executive that the fee is in the best interests of shareholders. Full disclosure of any inducement or break fee arrangement is required in the announcement under Rule 3.5 and in the offer document, with relevant documents displayed according to Rule 8. The Executive should be consulted at an early stage when proposing any inducement fee, break fee, or similar arrangement. Rule 33.1 also applies to other arrangements with similar financial or economic effects, even without cash payments, including penalties, put or call options, or similar provisions.

Standstill agreements, which restrict general offers for the offeree company, must be fully disclosed to shareholders by the board. Failure to disclose standstill agreements may lead to the Executive requiring independent shareholders' approval for legal actions by the board to enforce the agreement that could frustrate an offer. Standstill agreements may be relevant in determining if parties are acting in concert, as per Note 6 to the definition of acting in concert.

33.1 Inducement fees or break fees

Inducement fees or break fees must be minimal, typically not exceeding 1% of the offer value. The board of the offeree company and its financial adviser must confirm in writing to the Executive that the fee is in the best interests of shareholders. Full disclosure of any inducement or break fee arrangement is required in the announcement under Rule 3.5 and in the offer document with relevant documents displayed according to Rule 8.

The Executive should be consulted early when proposing any inducement fee, break fee, or similar arrangement.

Note to Rule 33.1

Arrangements to which Rule 33.1 applies

An inducement fee (or break fee) is an arrangement between an offeror (or potential offeror) and the offeree company, requiring the offeree to pay a cash sum on the occurrence of certain events, such as the board recommending a higher competing offer, which may prevent the original offer from proceeding. Rule 33.1 also covers any other favorable arrangements with the offeror or potential offeror with similar financial or economic

effects, even if no cash payment is involved. This includes penalties, put or call options, or equivalent provisions, regardless of whether they are deemed ordinary business practices. In uncertain cases, the Executive should be consulted.

33.2 Standstill agreements

Standstill agreements, which restrict the ability of a person from making general offers for the offeree company, must be fully disclosed to shareholders promptly. Failure to disclose standstill agreements may lead to the Executive requiring independent shareholders' approval for legal actions by the offeree company's board to enforce these agreements and may frustrate the offer. Standstill agreements may be relevant in determining if parties are acting in concert, as per Note 6 to the definition of acting in concert.

Rule 34 -Shareholder solicitations

Summary of the key points:

Rule 34 governs shareholder solicitations and specifies that any person intending to solicit proxies, votes, or acceptances of offers must use only previously published information that remains accurate and non-misleading at the time of use. Solicitation of shareholders, excluding institutional ones, must be done by the staff of the financial adviser to the soliciting party, who must be well-versed in the Takeovers Code requirements and their responsibilities. Shareholders should not be pressured and are encouraged to seek advice from professional advisers. The notes to Rule 34 provide additional guidance, stating that if it is not feasible to use the financial adviser's staff, the Executive may allow other personnel to be used, provided that they adhere to an approved script and are briefed on their responsibilities, with the operation being supervised by the financial adviser. Furthermore, if new information is inadvertently disclosed to some shareholders, it must be promptly made available to all shareholders as per the guidelines in Note 6 to Rule 8.1.

34.1 Information to be used in connection with shareholder solicitations

Individuals soliciting proxies, votes, or acceptances must use only previously published information that remains accurate and non-misleading at the time of use.

34.2 Soliciting shareholders

Shareholders, excluding institutional ones, can only be solicited by staff from the financial adviser of the soliciting party, who are knowledgeable about the Takeovers Code and their responsibilities, unless the Executive consents otherwise.

34.3 Consultation to be encouraged

Shareholders should not be pressurised and should be encouraged to consult their professional advisers.

Notes to Rule 34

1. Consent to use other staff

If using a financial adviser staff to conduct the solicitation is not possible, the Executive may allow the use of other personnel, provided that:

- (a) a script approved by the Executive is used;
- (b) the staff are carefully briefed by the financial adviser, emphasising adherence to the script, not answering questions beyond the script, and understanding their responsibilities under General Principle 3; and
- (c) the financial adviser supervises the operation.

2. New information

Any new information provided to some shareholders must be made available to all shareholders immediately in a manner as per Note 6 to Rule 8.1.

Rule 35 -Dealings by connected exempt principal traders

Summary of the key points:

Under Rule 35, exempt principal traders connected with an offeror or offeree company are prohibited from engaging in dealings or securities borrowing and lending transactions intended to assist the offeror or offeree company. A breach of this rule, such as engaging in unauthorised dealings, can lead to the suspension of the trader's exempt status as determined by the Executive.

Offerors and those acting in concert with them must not deal as principals with connected exempt principal traders in relevant securities of the offeree company during the offer period. If a connected exempt principal trader believes it has grounds to deal in relevant securities without assisting the offeror, the Executive must be consulted. Securities owned by an exempt principal trader connected with an offeror cannot be assented to the offer until it is unconditional as to acceptances. These securities must also not be voted in the context of an offer.

35.1 Prohibited dealings and securities borrowing and lending transactions

Exempt principal traders connected with an offeror or offeree company must not engage in dealings or securities borrowing and lending transactions that are intended to assist the offeror or offeree company.

Note to Rule 35.1

Any of these dealings or dealings outside the specified exempted activities are considered a serious breach of the Takeovers Code, potentially leading to the suspension of the trader's exempt status for a period deemed appropriate by the Executive.

35.2 Dealings between offerors and connected exempt principal traders

Offerors and those acting in concert with them are prohibited from dealing as principals with connected exempt principal traders in relevant securities of the offeree company during the offer period. The offeror and its concert parties may have to avoid dealing in the relevant securities and the principal trader may need to avoid dealing in these securities as a principal. If a connected exempt principal trader believes it has grounds to deal in relevant securities without assisting the offeror, the Executive must be consulted.

35.3 Assenting securities

Securities owned by an exempt principal trader connected with an offeror cannot be assented to the offer until it is or is declared unconditional as to acceptances.

35.4 Voting

Securities owned by an exempt principal trader connected with either the offeror or offeree company must not be voted in the context of an offer.

Note to Rule 35

Reference is made to Rule 22.4 in relation to disclosure of dealings.

Rule 36 -Obligations of other persons

Summary of the key points:

Rule 36 specifies that, beyond the offeror, principal members and other members (under exceptional cases) of a concert group may be required to extend an offer depending on the circumstances of the case, especially if the individual making the acquisition that triggers the obligations under Rules 23, 24, and 26 is not a principal member of the concert group. This Rule also clarifies that an underwriter of a mandatory offer is not usually considered part of the group acting in concert solely due to their underwriting role.

Besides the offeror, principal members of the offeror's concert group may be required to extend an offer, depending on the circumstances.

The primary responsibilities under Rules 23, 24, and 26 are typically assigned to the individual who makes the acquisition that triggers the obligation. If the person making the acquisition is not a principal member of the concert group, the obligation may fall on the principal member(s) or, in exceptional cases, other members of the concert group. This obligation can extend to a group member who does not hold any shares at the time the obligation arises. The Executive generally does not consider an underwriter of a mandatory offer, solely due to their underwriting role, as a member of the group acting in concert, and thus not responsible for making the offer or fulfilling other obligations.

Code on Share Buy-Backs

For the section below, unless specified otherwise, references to a Rule is reference to a Rule under the Share Buy-back Code.

Rule 1 -Methods of share buy-back

Summary of the key points:

Rule 1 sets out the permissible methods for a company to conduct a share buy-back. While share buy-backs are normally executed by the issuing company, a wholly-owned subsidiary may redeem or repurchase securities it has issued which are convertible into parent company shares in accordance with their original issuance terms.

The approved methods to effect a share buy-back include:

- (a) on-market share buy-back;
- (b) off-market share buy-back, which must be approved in accordance with Rule 2;
- (c) exempt share buy-back; and
- (d) share buy-back by general offer, which must comply with the General Principles and Rules of the Codes.

Typically, a share buy-back is conducted by the company whose shares are being bought back. If a wholly owned subsidiary of a company has issued securities that are exercisable or convertible into shares of the parent company, the subsidiary may redeem or buy-back these securities according to their issuance terms.

Rule 2 - Off-market share buy-backs

Summary of the key points:

Under Rule 2, off-market share buy-backs require approval from the Executive before a company can proceed with acquiring shares. Approval is typically contingent upon the conditions set out in detail under this Rule, which includes requirements on shareholder approval, requirements on the meeting notice and circular, time limit on filing a certified copy of the resolution passed at the general meeting with the Executive, and requirements on making certain relevant agreements available for shareholder inspection for a specified period.

Off-market share buy-backs require approval from the Executive before a company can proceed with acquiring the shares.

Approval is typically contingent upon several conditions:

- (a) approval from at least 3-4ths of the votes cast on poll by disinterested shareholders, either in person or by proxy at a duly convened general meeting to consider the proposed off-market share buy-back;
- (b) the meeting notice must also include a circular containing the following specific information in addition to the information required in an offer document under Rule 4 and Rule 5 (where applicable):
 - i. identity and business activities of the proposed offeree(s) and their relationship with the offeror where applicable;
 - **ii.** description of the terms and conditions of the agreement(s) between the company and the proposed offeree(s); and
 - iii. advice from an independent financial adviser and a recommendation from an independent committee of the company's board of directors on whether to approve the buy-back.
- (c) filing a certified copy of the resolution under Rule 2(a) above with the Executive within 3 days after the relevant general meeting; and
- (d) making the agreement(s) under Rule 2(b)(ii) above available for shareholder inspection at the relevant general meeting and from the notice mailing date until and including the general meeting date.

Rule 3 -Shareholder approval

Summary of the key points:

Rule 3 addresses shareholder approval requirements for share buy-backs by general offer. A share buy-back must be approved by a majority of votes from shareholders present in person or by proxy at a duly convened general meeting. The meeting notice must also include the offer document. If the shareholders do not approve the buy-back, the offer lapses. A certified copy of the resolution must be filed with the Executive within 3 days after the meeting. It must be noted that an exemption from the Companies Ordinance (Cap. 622) is required to allow the meeting notice to include the offer document.

If a shareholder has a material interest in the share buy-back that is different from others, the buy-back must be approved by a majority of votes from all the other shareholders. For delistings or privatisations, directors and those acting in concert with them are not considered independent and cannot vote. Approval for delistings or privatisations requires at least 75% of votes from independent shareholders, with no more than 10% voting against. If there are multiple classes of equity share capital, the Executive may require separate class meetings for approval by a majority of votes from each class.

3.1 General meeting to approval a share buy-back by general offer

A share buy-back must be approved by a majority of votes from shareholders present in person or by proxy at a duly convened general meeting. The general meeting must be convened with a notice accompanied by the offer document, as per Rule 2.9 of the Takeovers Code. If shareholders do not approve the buy-back, the offer lapses.

A certified copy of the resolution must be filed with the Executive within 3 days after the general meeting.

Note to Rule 3.1

An exemption from section 238(2) of the Companies Ordinance (Cap. 622) is required to allow the notice of the meeting to be accompanied by the offer document and for the offer document to be published no later than 21 days after the date of the document, with no fee for this exemption application. (See Rule 5.1(c) and also paragraph 5.0 of Schedule V.)

3.2 Approval by independent shareholders

If a shareholder has a material interest different from other shareholders, the buy-back will generally be required to be approved by a majority of votes from all other shareholders in person or by proxy at a duly convened general meeting.

3.3 Approval of delistings and privatisations by independent shareholders

For share buy-backs that will result in a delisting of the offeror from the Stock Exchange or a privatisation:

- (a) directors and persons acting in concert with them are not considered independent and cannot vote in the meeting to approve the delisting or privatisation convened according to the Listing Rules; and
- **(b)** the share buy-back requires approval by at least 75% of votes from independent shareholders cast in person or by proxy at a duly convened general meeting, with no more than 10% of votes from independent shareholders against the resolution.

3.4 Different classes of equity share capital

Where the offeror has more than one class of equity share capital, the Executive should be consulted. The Executive may require that the share buy-back be subject to approval by a majority of votes from holders of each class of shares cast in person or by proxy in separate class meetings that must be duly convened.

Rule 4 – The offer document

Summary of the key points:

Rule 4 states that the offer document for a share buy-back must include the information required under Schedule III, along with any other pertinent information necessary for shareholders to make an informed decision. The offer document does not need to be sent to registered holders of securities that can be exercised or converted into shares of the class subject to the buy-back if the offer price is more than 10% lower than the exercise or conversion price of those securities.

4.1 Consents of offer document

The offer document for a share buy-back by general offer must include information as specified in Schedule III, along with any other relevant details necessary for shareholders to make an informed decision.

4.2 Securities that may be exercised or converted

The offer document does not need to be sent to registered holders of securities that can be exercised or converted into shares of the class being bought back by general offer if the offer price is more than 10% lower than the exercise or conversion price of those securities. If there is any uncertainty, consultation with the Executive is advised.

Rule 5 -Application of the Takeovers Code to share buybacks

Summary of the key points:

Under Rule5, for buy-backs seeking privatisation or delisting, all provisions of the Takeovers Code apply. Whitewash transactions must comply with this Rule 5, Note 1 to Rule 26 of the Takeovers Code, and Schedule VI. Other general offers and off-market buy-backs typically follow other Rules as specified below (e.g., disclosure, documentation, and procedural requirements).

The Rule further addresses the treatment of shareholders in a location where jurisdictional laws prohibit a share buy-back by general offer in accordance with the requirements of the Codes. It also mandates that share buy-backs by general offer must be made to all shareholders of the class, with arrangements where shares tendered are in excess of the applicable percentage. Additionally, it prohibits on-market share buy-backs from the announcement date of a general offer share buy-back until its closure, lapse, or withdrawal.

5.1 Application of Takeovers Code

Offerors must consult the Executive at an early stage to determine the applicability of the Codes to the proposed share buy-back. For share buy-backs by general offer aimed at privatising or delisting a company, all provisions of the Takeovers Code typically apply. In cases involving a "whitewash" during a general offer or off-market share buy-back, additional rules, including this Rule, Note 1 on dispensations from Rule 26 of the Takeovers Code and Schedule VI of the Codes, apply.

For other general offer share buy-backs and applicable off-market share buy-backs, specific rules of the Takeovers Code generally apply, including Rule 1.4; Rules 2.1 and 2.6-2.9; Rules 3.2 and 3.4-3.9; Rule 5; Rules 8.1, 8.2, 8.5, and 8.6; Rule 9; Rules 10.1-10.9 and 10.11; Rules 11 and 12; Rules 15-20; Rules 21.1, 21.3, 21.4, 21.6, and 21.7; Rules 22 and 23; Rules 24.1 and 24.3; Rule 25; Rule 27; Rule 29; Rule 30.1; Rule 32.3; and Rules 34 and 35

Note to Rule 5.1

Notes to Rules of the Takeovers Code

Some Notes to the Rules of the Takeovers Code listed above may not be relevant to share buy-backs by general offer, and consultation with the Executive is advised.

5.2 Excluded shareholders

If certain shareholders of the offeror are in jurisdictions where laws prohibit share buybacks by general offer made according to the Rules under the Codes, the offeror should consult the Executive and the Executive will ensure that the interests of these shareholders are not unduly prejudiced.

5.3 Pro rata entitlement

Share buy-backs by general offer must be made to all shareholders of the class, allowing them to accept in full for the relevant percentage of their holdings. If shareholders tender more shares than the required percentage, the offeror must accept the excess shares from each shareholder on a pro-rata basis, ensuring the total number of shares sought in the offer is achieved.

5.4 On-market share buy-backs

On-market share buy-backs by the offeror after the date of the announcement of a share buy-back by general offer is prohibited until and including the date on which the offer closes, lapses, or is withdrawn.

Rule 6 – Takeovers Code implications of share buy-backs

Summary of the key points:

Under Rule 6, if a share buy-back results in an increase in a shareholder's proportionate interest in the voting rights of an offeror, this increase is considered an acquisition.

If a share buy-back results in an increase in a shareholder's proportionate interest in the voting rights of an offeror, this increase is considered an acquisition under the Takeovers Code and such an acquisition will be subject to Rule 32 of the Takeovers Code.

Rule 7 -Prohibition on distributions

Summary of the key points:

Rule 7 prohibits companies from announcing or engaging in share distributions following a share buy-back announcement. The prohibition period starts on the date of the share buy-back announcement and ends on the 31st day after the completion or withdrawal of the buy-back. Rule 7 does not typically apply to share distributions that do not involve raising capital, such as bonus issues and dividends in specie.

Companies are prohibited from announcing or engaging in share distributions following a share buy-back announcement. The prohibition period starts on the date of the share buy-back announcement and ends on the 31st day after the completion or withdrawal of the buy-back.

Rule 7 does not typically apply to share distributions that do not involve raising capital, such as bonus issues and dividends in specie. Any person planning to engage in a share distribution during the specified period should consult with the Executive before proceeding with the distribution or making any related announcements.

Rule 8 -Waivers

Summary of the key points:

Rule 8 grants the Executive the discretion to waive compliance with certain requirements under specific circumstances. This waiver is particularly considered when compliance is deemed unduly burdensome.

The Executive's has the discretion to waive compliance with the Share Buy-backs Code's requirements. Waivers may be granted if compliance is deemed unduly burdensome for any party involved in a share buy-back.

Examples where waivers might be considered include share buy-backs by general offer to odd lot shareholders; share buy-backs by general offer for non-voting fixed participation shares, which are more similar to debt securities than equity securities.

Schedule I - Offer Document for Takeovers and Mergers

Summary of this Schedule:

Schedule I sets out the essential components and disclosures required in an offer document for takeovers and mergers, such as information on the offeror, intentions regarding the offeree company and its employees, shareholdings and dealings, partial offers, shares offered for and dividends, conditions of the offer, market prices of offeree company's and offeror's securities, resources for the offer, financials, arrangements in connection with the offer, as well as statement on Takeovers Code obligations, further information in cases of securities exchange offers, estimated value of unlisted paper consideration, no set-off of consideration, and arrangements in relation to dealings. Schedule I also includes wordings and statements that must be included in the offer document.

The following statement must be included in a prominent position unless the Executive consents otherwise:

"IMPORTANT

If you are in doubt as to any aspect of this offer, you should consult a licensed securities dealer or registered institution in securities, a bank manager, solicitor, professional accountant, or other professional adviser.

If you have sold all your shares inyou should at once hand this document and the accompanying form to the purchaser or to the licensed securities dealer or registered institution in securities or other agent through whom the sale was effected for transmission to the purchaser."

- 1. The document must provide the name and address of the offeror, any financial adviser, or other person making the offer on behalf of the offeror, and the principal members of the offeror's concert group. It should state whether any securities acquired through the offer will be transferred, charged, or pledged to others, including the names of involved parties and details of any agreements, arrangements, or understandings as well as charges and pledges that may lead to a transfer of voting rights.
- 2. If the offeror or any principal member of its concert group is a company, the document must disclose the identity of the ultimate controlling shareholders and the names of the directors of these companies, their ultimate parent companies and listed companies where applicable.
- 3. The offeror's intentions regarding the offeree company must be detailed, including:
 - i. continuation of the business:

- ii. \any major changes to the business, including redeployment of fixed assets;
- iii. long-term commercial justification for the offer; and
- iv. intentions regarding the continued employment of the offeree company's employees and its subsidiaries.
- 4. There are also requirements on disclosing shareholdings and dealings, including:
 - i. the shareholdings of the offeror in the offeree company;
 - ii. in a securities exchange offer, the shareholdings in both the offeror and offeree companies that directors of the offeror are interested in;
 - iii. in a securities exchange offer, the shareholdings in the offeror and offeree companies owned, controlled, or directed by persons acting in concert with the offeror, including the names of these persons;
 - iv. in a securities exchange offer, shareholdings owned or controlled by persons who
 have irrevocably committed to accept or reject the offer along with their names;
 - v. in a securities exchange offer, shareholders owned or controlled by persons who has an arrangements under Note 8 to Rule 22 of the Takeovers Code the offeror or their concert parties; and
 - vi. in a securities exchange offer, shareholdings that the offeror or persons acting in concert have borrowed or lent must, except for borrowed shares that have been on-lent or sold.

If there are no shareholdings in any category, this must be stated, except for (iv) or (v) above where there are no irrevocable commitments or arrangements.

Any party required to disclose shareholdings under paragraph 4 must report any share dealings (including dates and prices) in the 6 months before the offer period up to the latest practicable date. If no dealings occurred, this must also be stated.

Notes:

1. Relevant shareholdings

For the purposes of paragraph 4, "shareholdings" includes: (a) in relation to the offeree company, holdings of (i) securities being offered or carrying voting rights and (ii) related convertible securities, warrants, options and derivatives; (b) in relation to the offeror company, holdings of (i) equity share capital, (ii) securities with rights substantially similar to those offered as consideration, and (iii) related convertible securities, warrants, options and derivatives; and (c) in a securities exchange offer involving a third company's securities as consideration, references to offeror shareholdings shall mean holdings in that third company, with (b) applying mutatis mutandis.

2. Options and derivatives

When disclosing options, details such as the exercise period, exercise price, date of the option, number of securities, and any option money paid or received must be provided. Details in relation to the exercise of options must also be disclosed.

For derivatives, the number of reference securities, maturity date, and reference price must be disclosed, along with full details of any dealings.

3. Meaning of "interested"

The term "interested" regarding directors' shareholdings is defined according to Part XV of the Securities and Futures Ordinance (Cap. 571).

4. Aggregation

Aggregation of transactions is allowed under certain conditions to avoid listing numerous transactions, provided that no significant dealings are concealed.

For dealings made during the offer period and the month before, no aggregation is allowed; for dealings in the 2 months prior to the period, daily aggregation is permitted; and for the dealings in the 3 months before that, weekly aggregation is acceptable.

Purchases and sales should not be netted off, and the highest and lowest prices must be stated. A complete list of all dealings should be sent to the Executive and made available for inspection.

5. Irrevocable commitments

Irrevocable commitments must clarify if there are circumstances under which they cease to be binding, such as if a higher offer is made.

6. Discretionary fund managers and principal traders

Shareholdings of non-exempt discretionary fund managers and principal traders connected with an offeror should be disclosed under category (iii) of paragraph 4, and their dealings should also be disclosed accordingly.

Partial offer

In the case of a partial offer, the reasons for making a partial offer instead of a full offer should be provided.

Shares offered for and dividends

- **8.** Precise details of the securities for which the offer is made must be stated, including whether they are to be acquired cum or ex any dividend or other distribution.
- 6A. It should be specified whether the offeror will pay any stamp duty and that the person accepting the offer will become liable for stamp duty under the Stamp Duty Ordinance (Cap. 117), or if not, the rate of the stamp duty that the person will be liable to pay.

Conditions of offer

- **9.** The price or other consideration to be paid for the securities must be stated.
- 10. All conditions of the offer should be detailed, particularly if the offer is conditional upon a minimum number of acceptances and the last day on which the offer can become unconditional as to acceptances. The offer document must include particulars of all documents required and procedures to be followed for acceptance.
- **11.** A statement should be included on whether the offeror intends to use any powers of compulsory acquisition.

Market prices of offeree company's and offeror's securities

12. The closing price on the Stock Exchange (or another stock exchange where they are listed) of the securities of the offeree company, which are the subject of the offer, should be provided for the latest practicable date of the offer document; on the last business date before the date of the initial announcement and the offer announcement; and at the end of each of the calendar months during the period commencing 6 months before the offer period and ending on the latest practicable date. If securities are not listed, any available transaction information, including the number and price, should be provided, along with the source or a negative statement if unavailable.

The highest and lowest closing market prices, along with relevant dates, must be disclosed for the period starting 6 months before the offer period and ending on the latest practicable date of the offer document.

Any document comparing the offer's value with previous prices must include a comparison with the price on the last business day before the offer period.

If the offer involves securities of the offeror, similar information must be provided for those securities

Note:

In cases where trading is halted or suspended, the closing price on the last full trading day and the price immediately before the halt or suspension should be disclosed.

Resources for offer

13. For offers involving cash or other assets (excluding new securities), a financial adviser or independent party must confirm that sufficient resources are available to satisfy full acceptance of the offer.

Financial information

14. The following financial information must also be disclosed:

- (i) For securities exchange offers, financial information about the offeror must be included, covering the last 3 financial years. This includes revenue, profit or loss before taxation, profit or loss attributable to owners and non-controlling interests, comprehensive income, tax expenses, material income or expense items, dividends distributed, and earnings and dividends per share.
- (ii) (iii) & (iv) a statement of financial position, cash flows, and any other primary statements from the last published audited accounts.
- (v) any material changes in the financial or trading position of the offeror since the last audited accounts, or a statement confirming no known changes.
- (vi) Details from any interim statements or preliminary announcements since the last audited accounts.
- (vii) Significant accounting policies and relevant notes from the published accounts.
- (viii) Any modified opinions, emphasis of matter, or material uncertainties related to going concern in the auditors' reports for the last 3 financial years, or a negative statement where applicable
- (ix) If a change in accounting policy results in non-comparable figures, this must be disclosed along with the approximate variation amount.

Offer documents, except for cash offers seeking to privatise the offeree company, must describe the financing method and source, naming principal lenders or arrangers. The offeror must disclose any arrangements where payment of interest, repayment, or security for any liability (whether contingent or otherwise) will materially depend on the offeree company's business. If no such dependency exists, a clear negative statement confirming this must be provided.

Notes:

- 1. The Executive typically examines unlisted subsidiaries when applying paragraph 12 of Schedule I, unless (with the Executive's approval) the subsidiary is deemed sufficiently material to the group and the offer. Therefore, if the offeror belongs to a group, disclosure of the ultimate holding company's group accounts will generally be required.
- Additional information such as a general description of the business interests of the
 offeror and/or other person(s) concerned and details of those assets relevant to the
 business of the offeree company is expected if the offeror is not listed on the Stock
 Exchange.
- **3.** For partial offers, the offer document must include information specified in paragraph 12(a) of Schedule I, regardless of whether the consideration is securities or cash.

- **4.** In securities exchange offers where securities from a company other than the offeror are used as consideration, references to the offeror in paragraph 12(a) should refer to the company whose securities are being offered. Consultation with the Executive is advised in these cases.
- 5. If the offeror is a company listed on the Stock Exchange, information required under paragraphs 12(a)(ii), (iii), (iv), (vi), and (vii) can be incorporated by reference to documents published according to the Listing Rules.

Arrangements in connection with offer

- **13.** Details must be provided about any benefits given to directors of the offeree company as compensation for loss of office or related to the offer.
- **14.** A statement is required on whether any agreements, arrangements, or understandings exist between the offeror (or any person acting in concert with it) and directors, recent directors, shareholders, or recent shareholders of the offeree company, including full particulars of such agreements, arrangement or understanding.
- 14A. Details of any agreements or arrangements involving the offeror that relate to invoking conditions of the offer, including break fees, must be disclosed.
- 14B. For offers involving a sale by a vendor of shares in the offeree company, details of any consideration, compensation, or benefits paid or to be paid by the offeror or parties acting in concert with it to the vendor or parties acting in concert with the vendor must be provided. Disclosure of any understanding, arrangement, agreement, or special deal between the offeror (or any party acting in concert with it) and the vendor of shares (or any party acting in concert with the vendor) is also required.
- 14C. Details must be provided for any understanding, arrangement, or agreement between any shareholder of the offeree company and the offeror (or any party acting in concert with it).

Takeovers Code obligations

15. The offer document must include a statement of the obligations of the offeror and the rights of the offeree company shareholders under Rules 15, 16, 17, 19, and 20 of the Takeovers Code. The offer document should provide the address of websites where documents are displayed under Note 1 to Rule 8 of the Takeovers Code.

Further information for securities exchange offers

In securities exchange offers, additional information is required from the offeror, including:

- **16.** The nature and particulars of its business and financial and trading prospects.
- 17. The date and country of incorporation.

- 18. The address of its principal office in Hong Kong.
- Details of authorised and issued share capital and shareholder rights regarding capital, dividends, and voting.
- **20.** Whether the offered securities will rank equally with existing issued securities, and if not, a description of the rights of the holders including its ranking for dividends and capital.
- 21. Details of shares issued and bought back since the end of the last financial year.
- 22. Information on options, warrants, and conversion rights affecting shares.
- 23. Details of any capital reorganisation in the 2 financial years before the offer period.
- **24.** Information on bank overdrafts, loans, other similar indebtedness, mortgages, charges, guarantees, or other material contingent liabilities of the offeror and its subsidiaries, or a statement if none exist, as of a date not more than 3 months before the latest practicable date of the document.
- 25. Details of any material litigation involving the offeror as party.
- **26.** Information on every material contract entered into within 2 years before the offer period, excluding those entered in the ordinary course of business. Other disclosure requirements include disclosure of parties, dates, principal terms, conditions, and any consideration exchanged between the offeror or its subsidiaries.
- 27. Information on how and when the documents of title to the securities will be issued.
- 28. How the acquisition of the offeree company or any associated transaction will affect the emoluments of the offeror's directors. If there is no effect, this must be stated, including any changes to fixed amounts or variable amounts receivable. Grouping or aggregating the effect of the transaction on the emoluments of several or all of the directors will generally be acceptable.
- **29.** The impact of full acceptance of the offer on the offeror's assets, liabilities, profits, and business, without necessitating a profit forecast.

Estimated value of unlisted paper consideration

30. When unlisted securities are involved, an estimate of their value by an appropriate adviser must be provided, along with the assumptions and methodology used.

No set-off of consideration

31. A statement must be included stating that the settlement of consideration will be implemented in full according to the offer terms, disregarding any lien, right of set-off, counterclaim or other analogous right. The Executive will permit an offeror to set off consideration only with the shareholder's explicit consent or under exceptional circumstances.

Arrangements related to dealings

32. The offeror must disclose any arrangements referenced in Note 8 to Rule 22 of the Takeovers Code involving the offeror (or any concert party) and third parties. If no such arrangements exist, this must be explicitly stated. Additionally, if the offeror's directors or financial advisers are aware of similar arrangements between any other offeror associate and third parties, these must also be disclosed.

Schedule II - Offeree Board Circular for Takeovers and Mergers

Summary of this Schedule:

Schedule II lists the content requirements of the offeree board circular for takeovers and mergers unless consent is obtained from the Executive, which includes disclosures on the views of the offeree board, shareholdings and dealings, share capital of offeree company, financial information, material contracts, arrangements affecting directors and directors' service agreements.

1. It should list the names of the directors of the offeree company and those on the independent committee of the board, as per Rules 2.1 and 2.8 of the Takeovers Code. The independent committee's recommendation, or a statement explaining the absence of a recommendation, must be included, along with the written advice from the independent financial adviser appointed under Rule 2.1.

Notes:

- Boards with effective control must publicly explain their advice to shareholders, as their stance is crucial in offers.
- 2. If the board is divided on an offer, minority directors' views should also be published, and the Executive would typically require these to be circulated.
- **3.** Directors with conflicts of interest should not join the board's collective view on the offer, and the conflict's nature must be disclosed to shareholders.
- **4.** The circular must state that the independent financial adviser has consented to the inclusion of their recommendation or opinion.
- 5. In management buy-outs or similar transactions, a director is usually seen as having a conflict of interest if they are to have a continuing role in either the offeror or offeree company after a successful offer.
- **6.** The offeree board should comment on the offeror's plans for the company and its employees as stated in the offer document.
- 2. The disclosure must include:
 - the offeree company's shareholdings in the offeror;
 - ii. shareholdings in the offeree and offeror where offeree directors have an interest;
 - iii. for securities exchange offers, holdings controlled by offeree subsidiaries, pension funds, or persons presumed to be acting in concert with the offeree as per Class 5 or associates of the offeree as per Class 2, excluding exempt traders and fund managers;

- iv. for securities exchange offers, holdings controlled by a person who as an arrangement such as those under Note 8 to Rule 22 of the Takeovers Code involving the offeree or its concert parties as per Classes (1), (2), (3) and (5) or associates as per Classes (2), (3) and (4);
- v. for securities exchange offers, holdings managed on a discretionary basis by connected fund managers excluding exempt fund managers, unless the Executive consents otherwise;
- vi. offeree directors' intentions to accept or reject the offer regarding their own holdings; and
- vii. for securities exchange offers, shares borrowed or lent by the offeree or its directors (excluding on-lent or sold borrowed shares).

A negative statement is required where no such holdings exist, other than category (v) (except for category (iv) if no arrangements exist). For categories (i)-(ii), dealings in the 6 months pre-offer through the circular's latest date must be disclosed; for (iii)-(v), only offer-period dealings require disclosure.

Notes:

- 1. Resigning directors, as part of the transaction leading to an offer, must have their shareholdings and dealings disclosed in the circular.
- 2. The circular must disclose any arrangements related to dealings as per Note 8 to Rule 22 of the Takeovers Code, involving the offeree company or persons acting in concert or associated with it. If no such arrangements exist, this should be stated. Directors or their financial advisers must disclose any known arrangements between associates of the offeree company and other parties.
- 3. Notes to paragraph 4 of Schedule I are applicable to paragraph 2 of Schedule II.
- **3.** The circular must also include information on the authorised and issued share capital of the offeree company, shareholder rights regarding capital, dividends, and voting.
- 4. It should detail the number of shares issued since the last financial year.
- 5. Information on options, warrants, and conversion rights affecting shares in the offeree company must be provided.
- 6. The financial disclosure requirements for an offeree company over the last 3 financial years, include disclosure on the revenue, profit or loss before taxation, profit or loss attributable to owners of the company, profit or loss attributable to non-controlling interests, comprehensive income attributable to owners of the company, and comprehensive income attributable to both owners and non-controlling interests. It also requires disclosure of tax expenses, material income or expense items, dividends distributed, and earnings and dividends per share (a)(i). A statement of financial position, cash flows, and any other primary statements from the last published audited

accounts must be included (a)(ii) – (iii). Any material changes in the financial or trading position since the last audited accounts must be disclosed, or a statement confirming no known changes(a)(v). Details of interim statements or preliminary announcements since the last audited accounts are required(a)(vi). Significant accounting policies and relevant notes from published accounts must be provided(a)(vii). Any modified opinion, emphasis of matter, or material uncertainty related to going concern in the auditors' report for the last 3 years must be disclosed, or a negative statement if none exist (a)(viii).

Changes in accounting policy that affect comparability must be disclosed, including the approximate amount of variation(b).

Note:

If the offeree company is listed on the Stock Exchange, certain information can be incorporated by reference to other documents published under the Listing Rules.

- 7. Details of any bank overdrafts, loans, or other similar indebtedness, mortgages, charges, or guarantees or other material contingent liabilities of the offeree company and any of its subsidiaries must be disclosed, or a statement confirming their absence, as of a date not more than 3 months before the latest practicable date of the document.
- **8.** Information on any material litigation involving the offeree company must be provided.
- **9.** Disclosure of material contracts entered into by the offeree company or its subsidiaries within 2 years before the offer period, excluding those in the ordinary course of business, is also required. Details must include dates, parties, principal terms, conditions, and any consideration exchanged.
- **10.** Disclosure of any benefits given to directors of the offeree company as compensation for loss of office or related to the offer is required.
- **11.** Any agreements or arrangements involving directors that are conditional on or connected with the offer must be detailed.
- **12.** Disclosure is required for any material contracts entered into by the offeror where a director of the offeree company has a material personal interest.
- 13. Details of directors' service contracts with the offeree company or its subsidiaries or associated companies must be disclosed if they were entered into or amended within 6 months before the offer period, are continuous with a notice period of 12 months or more, or are fixed-term with more than 12 months remaining irrespective of the notice period.

The disclosure must include details of any prior contracts that have been replaced or amended, in addition to the current contracts. If no such disclosures are required under this provision, a negative statement to that effect must be made.

Notes:

- 1. For service contracts, particulars must include the director's name, contract expiry date, fixed remuneration, and any variable remuneration with calculation details. When there is more than one service contract, a statement of the aggregate remuneration is generally sufficient, unless it conceals significant discrepancies, such as one director being paid significantly more than others. If service contracts have been replaced or amended, remuneration details for both the current and previous contracts must be disclosed for each director individually.
- 2. A material increase in the remuneration of a director with a service contract exceeding 12 months, occurring within 6 months before the offeree board circular, is considered an amendment and must be disclosed. Both current and previous remuneration levels should be stated.
- 14. The circular must include the web addresses where documents are displayed under Note 1 to Rule 8 of the Takeovers Code.
- **15.** Any understanding, arrangement, agreement, or special deal between any shareholder of the offeree company and the offeree company, its subsidiaries, or associated companies must be detailed.

Schedule III - Offer Document for Share Buy-Backs by General Offer

Summary of this Schedule:

Schedule III sets out the essential components and disclosures required in an offer document for share buy-backs by general offer, these include information on the offeror, intentions rof the offeror, intentions of potential new controlling shareholder, shareholdings and dealings, terms of the share buy-back, shares offered for and dividends, conditions of the offer, market prices of shares, resources for the offer, financials, arrangements in connection with the offer, as well as statement on Takeovers Code obligations, share capital and other code obligations. Schedule III also includes wordings and statements that must be included in the offer document.

The following statement must be included in a prominent position unless the Executive consents otherwise:

"IMPORTANT

If you are in doubt as to any aspect of this offer, you should consult a licensed securities dealer or registered institution in securities, a bank manager, solicitor, professional accountant, or other professional adviser.

- 1. The document must state the date of dispatch, the name and address of the offeror, any financial adviser or person making the offer on behalf of the offeror, and the principal members of the offeror's concert group.
- 2. It should outline the offeror's intentions regarding reliance on sections 705, 711 to 716 and 718 to 721 of the Companies Ordinance or comparable company law provisions.
- 3. The offeror's intention to comply with public float requirements under Rule 8.08 of the Listing Rules should be included.
- **4.** The document must address the implications under the Takeovers Code, especially if the buy-back could lead to a change of control, and detail the intentions of potential new controlling shareholders regarding the continuation of the business, major business changes, and employment of the offeror's employees.
- 5. Information on the shareholdings and dealings must be disclosed, these including
 - i. Shareholdings in the offeror that directors are interested in;

- ii. shareholdings in the offeror by persons acting in concert with the offeror's directors, including their names;
- **iii.** shareholdings of individuals who have irrevocably committed to accept or reject the offer before the latest practicable date, along with their names;
- iv. Shareholdings of any shareholder holding 10% or more of the offeror's voting rights;
- v. shareholdings in the offeror that have been borrowed or lent by the offeror's directors or any concert parties, excluding any borrowed shares that have subsequently been on-lent or sold.

The percentage of the offeror's outstanding share capital represented by these shareholdings and the identity of each person involved must also be stated.

If there are no shareholdings in any category, this should be noted, except for categories involving irrevocable commitments or major shareholders.

Any party required to disclose shareholdings under paragraph 5 (including those with no holdings) must report all dealings for value in the relevant shares during the 6-month period preceding the offer through the offer document's latest practicable date. Such disclosures must include transaction dates and prices. If no dealings occurred, this must be explicitly stated. This requirement does not apply to category (iv) shareholdings.

Notes:

Shareholdings refer to securities with voting rights, convertible securities, warrants, options, and derivatives. Notes 2 to 6 to paragraph 4 of Schedule I apply equally to this paragraph 5 of Schedule III.

- **6.** The intentions of persons referred to in paragraph 5 of this Schedule III regarding acceptance of the offer, including the number of shares to be tendered and the percentage of their holdings, should be disclosed if known after reasonable inquiry. If not determinable, a statement to that effect should be included.
- 7. The offer document must outline the impact of a successful offer on the percentage voting rights of individuals mentioned under paragraph 5 of this Schedule III.
- **8.** The offer document should detail the reasons for the proposed share buy-back and the number of shares intended to be repurchased.
- The document must describe the pro rating and odd lot procedures related to the offer.
- **10.** Specifics about the class and number of shares to be bought back should be included, along with whether these shares will be acquired cum or ex any declared or potential dividends or distributions.
- 11. The consideration offered for the shares must be clearly stated.

- 12. All conditions of the offer need to be specified, particularly if the offer is conditional on receiving acceptances for a minimum number of shares and the deadline for the offer to become unconditional. The document should list all required documents and procedures for accepting the offer.
- **13.** Market prices of the shares subject to the offer must be provided, including:
 - (a) The closing price on the Stock Exchange or other relevant exchanges (i) on the latest practicable date; (ii) on the last business day before the initial announcement and the offer announcement under Rule 3.5 of the Takeovers Code; (iii) at the end of each calendar month from 6 months before the offer period to the latest practicable date; and (iv) if shares are not listed, any available transaction information during the period under (iii) above should be included, along with the source or a negative statement if no information is available.
 - (b) The highest and lowest closing market prices during the 6 months before the offer period up to the latest practicable date should be noted, with relevant dates
 - **(c)** If the offeror's document compares the offer value with previous share prices of the offeree company, a comparison between the current value of the offer and the price of the offeree company's shares on the last business day before the offer period should be included, regardless of other comparisons.

Notes:

If trading of securities is halted or suspended, the closing price on the last full trading day and the trading price immediately before the halt or suspension should be disclosed.

- **14.** For offers involving cash, confirmation from a financial adviser or another appropriate independent party is required to ensure that the offeror has sufficient resources to satisfy full acceptance of the offer.
- **15.** A description of the offer's financing, including the source of finance, must be provided. If funds are to be raised or borrowed, the terms and conditions of such arrangements and the names of the principal lenders or arrangers must be disclosed.
- **16.** Financial information about the offeror must include:
 - (i) Revenue, profit or loss before taxation, profit or loss attributable to owners of the company, profit or loss attributable to non-controlling interests, comprehensive income attributable to owners of the company, comprehensive income attributable to non-controlling interests, tax expense, material income or expense items, dividends distributed, and earnings and dividends per share for the last 3financial years.
 - (ii) (iii) & (iv) a statement of financial position, cash flows, and any other primary statements from the last published audited accounts.

- (v) Any material changes in the financial or trading position or outlook of the offeror since the last published audited accounts, or a statement confirming no known material changes.
- (vi) details of interim statements or preliminary announcements made since the last published audited accounts.
- (vii) significant accounting policies and relevant notes from the published accounts that are crucial for understanding the financial information.
- (viii) any modified opinion, emphasis of matter, or material uncertainty related to going concern in the auditors' report for each of the last 3 financial years, or a negative statement if none exist.

If there has been a change in accounting policy resulting in non-comparable figures, this must be disclosed along with the approximate amount of variation.

Note:

Information required by certain paragraphs can be incorporated by reference to other documents if the offeror is listed on the Stock Exchange.

- 17. The document must include the nature and particulars of the offeror's business and its financial and trading prospects.
- **18.** Details of any bank overdrafts, loans, mortgages, charges, guarantees, or other material contingent liabilities of the offeror and its subsidiaries must be disclosed, or a statement confirming the absence of such liabilities. These details should be as of a date which is not more than 3 months before the latest practicable date of the offer document.
- **19.** Any material litigation involving the offeror must be detailed.
- 20. The impact of a share buy-back on the offeror's earnings per share, net assets per share, liabilities, and working capital must be explained. If they are materially adverse, details on how they will be address or an appropriate negative statement must be included.
- The authorised and issued share capital and shareholder rights regarding capital, dividends, and voting must be detailed.
- **22.** Information on shares issued and bought back since the last financial year must be provided.
- **23.** Details of options, warrants, and conversion rights affecting the offeror's shares must be included.
- **24.** Any capital reorganisation in the 2 financial years before the offer period must be disclosed.

- **25.** The number and price of shares bought back by the offeror in the 12 months before the offer document date, including buy-back dates, must be detailed.
- **26.** If shares to be bought back were issued in the 2 years before the offer period, the distribution date, issue price per share, and aggregate proceeds must be disclosed.
- 27. The frequency and amount of dividends paid to holders of shares proposed to be bought back in the 2years before the offer date must be included. A description of the offeror's ability to pay dividends and any plans or intentions to declare a dividend or alter the dividend policy must also be disclosed.
- **28.** It mandates including a statement of the obligations of the offeror and the rights of the shareholders under Rules 15, 16, 17, 19, and 20 of the Takeovers Code.
- **29.** The document must include the address of the websites where documents are displayed, as per Note 1 to Rule 8 of the Takeovers Code.

Schedule IV – Extracts from Part 3 and 5 and Schedule 2 of the Securities and Futures (Fees) Rules

Summary of this Schedule:

This Schedule IV reproduces an excerpt of relevant rules under Parts 3 and 5 and Schedule 2 of the Securities and Future (Fees) Rules which is relevant to the fees to be paid for application for a ruling from the Executive and calculation of these fees. The section below sets out a summary of extract provided under Schedule IV.

Part 3 – Fees Prescribed for Purposes of Section 395(1)(a)(ii) of Ordinance

4. Interpretation of Part 3.

Definitions provided in this section include:

"Codes" refers to "The Codes on Takeovers and Mergers and Share Buy-backs" published by the Securities and Futures Commission (SFC) under Section 399(2)(a) and (b) of the Ordinance.

"Executive" means the Executive Director of the Corporate Finance Division of the SFC or their delegate.

"Introduction to the Codes" is the section titled "Introduction" under the Codes.

"offer" is defined by the Codes and includes alternative offers or offers of different values as applicable under Section 5(2)(a)(ii).

"offer document" is a document that must be submitted to the Executive in relation to an offer under the Codes.

"offeree company" is a corporation for which an offer is made according to the Codes.

"off-market share buy-back" is defined according to the Codes.

"off-market share buy-back circular" is a document required for submission to the Executive under the Share Buy-backs Code concerning an off-market share buy-back.

"relevant shares":

- (a) in relation to an offer in an offer document, refer to the securities subject to the offer;
- **(b)** in relation to an off-market share buy-back in an off-market share buy-back circular, refer to the securities subject to the buy-back; or

(c) in relation to a whitewashed offer, refer to the securities that would be the subject of the offer.

"ruling" encompasses any written ruling, waiver, consent, decision, confirmation, or other determination made under the Codes by the Executive, the Takeovers Panel, or the Takeovers Appeal Committee.

"Share Buy-backs Code" refers to specific parts of the Codes, including "Introduction", "Definitions", "General Principles", "Code on Share Buy-backs", and "Schedules".

"Takeovers Appeal Committee" refers to the committee established under section 8 of the Ordinance.

"Takeovers Code" includes parts of the Codes titled "Introduction", "Definitions", "General Principles", "Code on Takeovers and Mergers", and "Schedules".

"Takeovers Panel" refers to the panel established under section 8 of the Ordinance and known as the Takeovers and Mergers Panel.

"whitewash document" is a document required to be submitted to the Executive under the Whitewash Guidance Note in Schedule VI to the Codes.

"whitewashed offer" with respect to a whitewash document, refers to an offer that would be required under Rule 26 of the Takeovers Code without a waiver under Note 1 on dispensations from Rule 26 of the Takeovers Code.

- Fees relating to offer documents, off-market share buy-back circulars and whitewash documents:
- (1) Fees are prescribed under Schedule 2 of the Ordinance for the submission of first drafts of offer documents, off-market share buy-back circulars, and whitewash documents to the Executive for comment.
- (2) The applicable value for fee calculation is:
 - (a) for an offer document, the value of the offer or the lowest value of the offer contained in the offer document which has the lowest value if there are multiple offers;
 - (b) for an off-market share buy-back circular, the value of the buy-back;
 - $\begin{tabular}{ll} \begin{tabular}{ll} \beg$
- (3) If a revised offer replaces an offer in a previously submitted draft offer document, a revised offer document must be submitted to the Executive. A fee is payable to the SFC when a revised offer is submitted. This fee is the difference between the fee initially paid for the submission of the draft offer document and the fee that would have been payable if the revised offer had been included in the original draft.

4.

- (a) The value of an offer in an offer document or an off-market share buy-back in a circular is determined by:
 - (i) the total cash amount if the shares are acquired for cash;
 - (ii) the total value of securities on the date of announcement of a firm intention to make the offer or the off-market share buy-back if the shares are acquired in exchange for securities, based on the date of the firm intention announcement; or
 - (iii) the combined total of cash and securities on the date of the firm intention announcement if the shares are acquired partly for cash and partly in exchange for securities.
- **(b)** For a whitewashed offer in a whitewash document, the value is determined by:
 - (i) the total cash amount if the shares would be acquired for cash;
 - (ii) the total value of securities on the date of announcement of a firm intention to enter into the transaction which would require such whitewashed offer to be made, if the shares would be acquired in exchange for securities; or
 - (iii) the combined total of cash and securities on the date of the firm intention announcement to enter the transaction which would require the whitewashed offer to be made, if the shares would be acquired partly for cash and partly in exchange for securities.

If offers will lead to 2 or more variables under section 4, only the lower or lowest value will be considered.

- (5) Payment of the fees must be accompanied by a statement showing the value of the offer, off-market share buy-back or whitewashed offer and how the fee is determined with respect to section (4) above.
- (6) When first drafts of offer documents, off-market share buy-back circulars, and whitewash documents are combined for submission, the fee payable under subsection (1) is the aggregate of fees for each draft as if they are submitted separately; and subsection (3) will apply as if the draft document refers to the combine first draft and the revised offer document refers to the revised draft including the revised offer.

6. Fees for applications to Takeovers Panel or Takeovers Appeal Committee

For applications to the Takeovers Panel or Takeovers Appeal Committee for reviews of Executive rulings or sanctions, a fee of \$50,000 is payable to the SFC. An additional fee of \$20,000 is charged for each day beyond the first 2 days of review meetings, this fee is payable within 30 days of delivery of the ruling.

7. Fees for hearings concerning compliance with Codes or any rulings under them

- (1) In disciplinary proceedings instituted under section 12 of the Introduction to the Codes before the Takeovers Panel, a fee is determined according to subsection (3) below. The fee is payable to the SFC within 30 days after the Takeovers Panel delivers its ruling by a person that has caused unnecessary expenses during an investigation or hearing, or if they have breached the Takeovers Code, Share Buy-backs Code, or a ruling by the Executive or Takeovers Panel.
- (2) If a hearing is held to determine sanctions for a person who admits to breaching the Takeovers Code, Share Buy-backs Code, or a ruling, a fee to be determined according to subsection (3) below is also payable within 30 days of delivery of the ruling.
- (3) The fee for such breaches or unnecessary expenses is \$50,000, with an additional \$20,000 for each day beyond the first 2 days of the hearing.

8. Fees for miscellaneous applications

- (1) For miscellaneous applications to the Executive for rulings under the Takeovers Code or Share Buy-backs Code, a fee of \$24,000 is required to be paid.
- (2) If a fee has already been paid for the submission of a first draft of a whitewash document or the first draft of combined documents, no additional fee is required for applications for a waiver related to a whitewash document.

9. Time for payment of fees

(1)

- (a) Fees under section 5(1) shall be paid when the first draft is submitted to the Executive or where section 5(6)(a) applies, when the draft is submitted to the Executive.
- **(b)** The fee specified in section 5(3) shall be paid when the revised offer document is submitted to the Executive, or when 5(6)(b)(ii) applies, when the draft including the revised offer is submitted to the Executive
- (2) The fee outlined in section 6(a) must be paid at the time of application to the Takeovers Panel or the Takeovers Appeal Committee.
- (3) The fee mentioned in section 8(1) is payable when the application is made to the Executive.

Part 5 -Miscellaneous

11. Waiver of fees

(1) The SFC has the discretion to waive or refund fees, either partially or fully, if it deems the fee payment to be unduly burdensome or inappropriate for any person or class of persons.

Schedule 2 -Fees Prescribed for Purposes of Section 395(1)(a)(ii) of Ordinance

Applicable value

The document is a fee schedule from the SFC related to financial transactions as per section 395(1)(a)(ii) of an ordinance.

The schedule outlines fees based on the transaction value:

Applicable Value	Fee
Not exceeding \$75,000,000	\$25,000
Exceeding \$75,000,000	\$75,000
but not exceeding \$125,000,000	
Exceeding \$125,000,000	\$150,000
but not exceeding \$300,000,000	
Exceeding \$300,000,000	\$250,000
but not exceeding \$600,000,000	
Exceeding \$600,000,000	\$350,000
but not exceeding \$1,200,000,000	
Exceeding \$1,200,000,000	\$500,000
but not exceeding \$2,000,000,000	
Exceeding \$2,000,000,000	\$500,000, plus 0.01% of the value over \$2,000,000

Schedule V – Guidelines for the Exemption of Listed Companies for the Share Buy–Back Requirements of Sections 238 to 241 of The Companies Ordinance (Cap. 622)

Summary of this Schedule:

Schedule V is a set of guidelines for the exemption of listed companies from share buy-back requirements under sections 238 to 241 of the Companies Ordinance (Cap. 622) in Hong Kong.

1.0 Definitions

- 1.1 Definitions are provided for key terms used in the guidelines:
- "Associate" and "Chief Executive" are defined as per the Listing Rules.
- "Code" refers to the Code on Share Buy-backs approved by the Securities and Futures Commission (SFC).
- "Executive" refers to the Executive Director of the Corporate Finance Division of the SFC or their delegate.
- "Guidelines" are these guidelines for exemption from share buy-back requirements.
- "Listing Rules" are the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Ltd.
- "On-market share buy-back" and "Off-market share buy-back" are defined by the Code.
- "Ordinance" refers to the Companies Ordinance (Cap. 622).
- "Panel" refers to the Takeovers and Mergers Panel.
- "SFC" stands for the Securities and Futures Commission.
- "SF Ordinance" refers to the Securities and Futures Ordinance (Cap. 571).
- "Share buy-back" is defined by the Code.
- "Substantial shareholder" is a person holding 10% or more of a company's voting rights.

2.0 Nature and purpose of the Guidelines

2.1 Section 236(1) of the Ordinance allows listed companies to engage in share buy-backs, subject to certain prohibitions and payment regulations outlined in sections 236(2), 236(3),

and 257 to 266. Listed companies in Hong Kong may buy back their own shares according to sections 238 to 243 of the Companies Ordinance, which outline the procedures and requirements for such buy-backs, including shareholder approval and disclosure.

- 2.2 The Code on Share Buy-backs imposes similar requirements on all public companies in Hong Kong, regardless of the location of incorporation. Rule 8 of the Code allows the Executive to waive compliance with certain provisions upon application.
- 2.3 Section 241(1) of the Ordinance allows the SFC to exempt listed companies from sections 238, 239, or 240 subject to conditions determined by the SFC, hence, providing flexibility similar to Rule 8 of the Code.
- 2.4 The SFC has delegated its exemption-granting powers under section 241(1) to the Executive Director of the Corporate Finance Division and the Takeovers and Mergers Panel, as per section 10(1) of the Securities and Futures Ordinance. The Executive can initially grant exemptions, referring complex cases to the Panel, which can also review Executive decisions upon request and grant exemptions with respect to these referred cases.
- 2.5 Section 241(2) allows the SFC to suspend, withdraw, or vary exemptions if conditions are not met or on other grounds as it sees fit, with these powers also delegated to the Executive and the Panel. The SFC may also vary any condition attached to any exemption granted.
- 2.6 The Guidelines aim to assist listed companies in understanding how the Executive and the Panel may exercise their discretion in granting exemptions, though they are not exhaustive and may be adjusted as needed.

3.0 Application for an exemption or variation

- 3.1 Applications for exemptions from sections 238, 239, or 240 of the Companies Ordinance, or for variations of previously granted exemptions, must be submitted in writing to the Executive. Exemption applications seeking relief on provisions that are common under both the Ordinance and Code should seek relief from both sets of requirements.
- 3.2 Applicants should consider the Guidelines and General Principles of the Code when preparing their applications. The Executive or the Panel may request additional information or conduct inquiries as needed.
- 3.3 The Guidelines allow for general or "blanket" exemptions and specific exemptions, which may be subject to conditions deemed appropriate by the Executive or the Panel

4.0 General or "blanket" exemption

4.1 General or "blanket" exemptions are intended for all listed companies or specific groups during a "market emergency" and must be in the market's best interest. T

4.2 These exemptions require Panel consideration and SFC approval, are time-limited, and restrict the number of shares that can be bought back. It would also require all share buy-backs effected in reliance upon the exemption to be made by way of an on-market share buy-back to be conducted in accordance with the Listing Rules

5.0 Specific exemptions

- 5.1 Specific exemptions are for individual companies from one or more of the share buyback requirements. It is currently anticipated that 3 types of specific exemptions would be granted.
- 5.2 Firstly, exemptions from shareholder authorisation for share buy-backs in cases of a disorderly market or when time constraints prevent a shareholder meeting may be granted. The exemption will generally be conditional on compliance with Listing Rules.
- 5.3 Secondly, exemptions from shareholder authorisation for off-market share buy-backs involving a small number of shares from non-director or non-chief shareholders. This exemption applies to executive or substantial shareholders of the company or their associates. The exemption is considered when the benefits of the proposed share buy-back outweigh the costs of obtaining prior shareholder authorisation.
- 5.4 Thirdly, an exemption can be granted to relieve companies from the requirements of section 238(2). This exemption allows companies to comply with Rule 3 of the Code, which mandates sending the offer document to shareholders no later than 21 days after announcing the proposed buy-back. The offer document must be sent with the notice of the general meeting. This exemption is granted in all cases and does not require a fee.

Schedule VI - Whitewash Guidance Note

(See Note 1 on dispensations from Rule 26 of the Takeovers Code.)

Summary of this Schedule:

Schedule VI is the Whitewash Guidance Note which sets out further requirements and restrictions when seeking a whitewash waiver under Rule 26 of the Takeovers Code to dispense of the obligation to make a mandatory general offer upon passing the thresholds set out under Rule 26 of the Takeovers Code.

1. Introduction

The Whitewash Guidance Note outlines procedures for requesting a waiver from the obligation to make a general offer under Rule 26 of the Takeovers Code. A waiver is necessary when new securities are issued, leading to a person or group acquiring voting rights that would typically require a general offer.

The term "offeror" refers to potential controlling shareholders, and "offeree company" refers to the company issuing new securities.

General Principles of the Codes also apply to transactions under whitewash procedures.

2. Specific grant of waiver required

A specific waiver grant is required, contingent on:

- (a) no disqualifying transactions by the waiver-seeking party;
- (b) prior consultation with the Executive by involved parties or their advisers;
- **(c)** Executive's prior approval of a circular to shareholders detailing the proposals and the information required under paragraph 4 of this Schedule VI below;
- (d) Compliance with relevant Takeovers Code Rules, including Rule 2.1 and Note 2 to Rule 2. Rule 2.8, Rule 3, Rules 7 and 26.4, as well as Rules 8, 9, 10, 11, 12, 18, 25, 31.1, and 34.
- **(e)** Approval of the proposals must be obtained through an independent vote at a meeting of relevant security holders, as per Note 1 on dispensations from Rule 26, regardless of whether the meeting is necessary for the securities issue.
- **(f)** The person or group seeking the waiver, along with any non-independent parties, must be disenfranchised at such meetings.

Notes:

- 1. Early consultation with the Executive is crucial to avoid delays, as documents may require multiple revisions to meet the Executive's standards, and no waiver will be granted until documentation is approved.
- 2. For listed companies, clearance by the Stock Exchange's Listing Division does not equate to Executive approval of the circular.

3. Disqualifying transactions

The Executive typically will not waive the Rule 26 obligation if the party receiving new securities or any concert party has acquired voting rights in the company within 6 months = before the date of the announcement of the proposals but after to negotiations, discussions or reaching understandings or agreements with the directors of the company, except for fully disclosed new share subscriptions in the whitewash circular. A waiver from the obligation to make a general offer under Rule 26 of the Takeovers Code will not be granted or will be invalidated if acquisitions or disposals of voting rights occur without the Executive's prior consent between the proposal announcement and subscription completion.

Class (6) of the definition of acting in concert would apply to directors of a company, and a whitewash is treated as an offer for this purpose.

Acquisitions of shares within 6 months after the shareholders' meeting from a director or substantial shareholder at the time of the whitewash are deemed special deal transactions prohibited under Rule 25, unless consent is obtained from the Executive for de minims acquisitions.

4. Circular to shareholders

- (a) The circular to shareholders must include independent advice as per Rule 2 regarding the transaction, its controlling position, and its effects on shareholders.
- **(b)** Full details of the maximum potential controlling holding of voting rights must be provided, assuming full participation in underwriting arrangements and full conversion or exercise of subscription rights by controlling shareholders.
- **(c)** If the potential holding of voting rights exceeds 50%, the circular must prominently reference this and note that controlling shareholders may increase their holding without further obligation under Rule 26.
- **(d)** There are also specific requirements for transactions involving potential controlling shareholdings, specifically when multiple individuals are involved. It mandates the disclosure of the identities and voting rights of potential controlling shareholders.

(e) A statement is required indicating that the Executive has agreed to waive obligations for a general offer, contingent on independent shareholder approval as per Note 1 on dispensations from Rule 26 of the Takeovers Code.

The circular must also comply with the rules of the Takeovers Code including

- (f) Note 1 to Rule 8 and paragraph 14 of Schedule II regarding documents that must be displayed
- (g) Information to shareholders must include details as per Rule 9.2, paragraphs 1, 2, 3, 6, and 10 of Schedule I and paragraphs 6, 7, and 8 of Schedule II in relation to assets being injected;
- (h) Rules 9.3 and 9.4 which pertain to responsibility statements;
- (i) Rules 10 and 11 address profit forecasts, financial information, merger benefits statements, and asset valuations related to the offeree company or assets being acquired;
- (j) Arrangements related to the proposal covered under paragraph 14 of Schedule I and paragraphs 10, 11, and 12 of Schedule II.
- **(k)** Disclosure of shareholdings and dealings required under paragraph 4 of Schedule I and paragraph 2 of Schedule II, covering a 6-month period before the proposal announcement. Certain categories of dealings are exempt from disclosure.
- (l) Paragraph 9 of Schedule II addresses material contracts;
- (m) paragraph 13 on service contracts of directors and proposed directors.; and
- (n) Share capital of the offeree company under paragraphs 3 to 5 of Schedule II.

5. Underwriting and placing

In underwriting or placing scenarios, details of underwriters or placees must be provided to the Executive, including information on any group acting in concert and their potential maximum holdings.

6. Announcements following shareholders' approval

- (a) After shareholder approval, the offeree company must announce the meeting results, including the number and percentage of voting rights associated with the shares.
- **(b)** When control depends on underwriting results, the offeree company must announce the controlling shareholders' final voting rights (both number and percentage) after the securities issuance.

For issuances of convertible securities, warrants, options, or subscription rights, the announcement on the potential control holding must be based on the Schedule VI

paragraph 4(b) assumptions; and (2) post-issuance announcements must confirm the controlling shareholders' actual voting rights by number and percentage.

Copies of announcements made under this paragraph 6 should be sent to the Executive.

7. Subsequent acquisitions

Where the mandatory offer requirement under Rule 26 is waived via independent shareholder approval under Note 1 on dispensations from Rule 26 of the Takeovers Code, the acquirer's percentage holding shall be deemed to be their lowest percentage, immediately after the whitewashed transaction. Any subsequent voting rights acquisitions are then subject to the 2% creeper provision, calculated against this baseline over rolling 12-month periods (per Note 15 to Rule 26.1).

8. Convertible securities, warrants and options

Where shareholders approve the issuance of convertible securities, warrants, or options (without immediate voting rights), the Executive will treat such approval as sanctioning maximum conversion or subscription at the earliest opportunity without triggering a Rule 26 mandatory offer, with post-conversion holdings as the lowest percentage holding of the controlling shareholder under Note 15 to Rule 26.1. However, if controlling shareholders subsequently acquire additional voting rights, the waiver only applies to conversions or subscriptions that, when combined with purchases, do not exceed the originally approved threshold, with such acquisitions remaining subject to the mandatory offer requirement under Rule 26. Outstanding convertible instruments, their potential dilution impact, and the Rule 26 waiver must be disclosed in all annual or interim reports alongside a disclosure of the interest of directors and substantial shareholders.

9. Share buy-backs

If a company buys back shares after obtaining shareholder approval under Note 1 on dispensations from Rule 26 of the Takeovers Code on the issuance of convertible securities, warrants, or options, the potential controlling shareholders' percentage may increase, invoking Rule 32.1 of the Takeovers Code. If Rule 32.1 does not apply because the potential controlling shareholder are not directors or acting in concert with any directors, the waiver remains for the originally approved voting rights. If the shareholders are directors or acting in concert with directors, further shareholder approval is required for the conversion or subscription.

10. Underwriting

For underwriting new securities, after obtaining shareholder approval for a maximum potential controlling holding that may arise due to underwriting an issue of new securities, the issue is considered whitewashed, regardless of any general offer obligation. The underwriting shareholder's holding immediately post-issue is deemed to be the lowest percentage holding.

11. Issue of new shares and off-market share buy-backs

The Executive typically will not grant or will invalidate a waiver under Rule 26 if potential controlling shareholders subscribe to 30% or more (or more than 2% if holding between 30% to 50%) of new shares and the company conducts a substantial off-market share buyback. The Executive has the authority to aggregate financial transactions or arrangements over a reasonable period. Parties involved in such transactions or arrangements are advised to consult the Executive if there is any uncertainty.

Schedule VII - Conflicts of Interest Guidance Note

Summary of this Schedule:

Schedule VII sets out the guidance note from the SFC addressing conflicts of interest issues due to possession of material confidential information or in cases where the financial advisers is part of a multi-service financial organisation.

(a) Material confidential information

Conflicts may arise from possessing material confidential information, such as when a financial adviser has information about an offeror or offeree company due to previous client relationships or past transactions. Advisers may need to decline acting in such cases, as isolating information or assigning different personnel often cannot resolve the conflict.

(b) Conflicts of multi-service financial organisations

Financial advisers or proposed financial advisers belonging to multi-service financial organisations must be vigilant about conflicts, especially if the organisation include an auditor's practice or a lending institution. For instance, a financial adviser cannot act as an independent adviser to an offeree company if it or its affiliates are the company's auditor.

In all potential conflict situations, consultation with the Executive is required.

(c) Segregation of businesses

Organisations must understand the implications of conducting multiple business activities, such as corporate finance or stockbroking, and ensure compliance with relevant Codes. If an organisation is involved in an offer, the Rules of the Codes may be relevant to other parts of the organisation, as such, compliance departments play a crucial role and they should consult with the Executive when in doubt.

The Takeovers Code recognises "exempt fund managers" and "exempt principal traders", acknowledging that fund management and principal trading can be separate within the same organisation. Organisations must demonstrate to the Executive that these operations are segregated and conducted independently of other interests within the organisation or of their clients, and must ensure compliance with the application Rules under the Takeovers Code.

Schedule VIII - Receiving Agents' Code of Practice

Summary of this Schedule:

This Schedule VIII sets out the requirements of a receiving agent and sets out guidelines for the conduct expected of receiving agents. The Code of Practice requires cooperation between the offeree company's registrar and the offeror's receiving agent, including sharing updated registers in a usable format. Key rules include requirements to keep the register updated, proper documentation of changes, and unqualified acceptance certificates (with limited disclaimers).

Notes: The Receiving Agents' Code of Practice is part of Schedule VIII and should be read alongside Rules 26.2 and 30.2 of the Takeovers Code, with specific attention to Notes 1, 2, 7, and 8 of Rule 30.2.

Introduction

- 1. The Code was developed in consultation with the Stock Exchange and the Hong Kong Federation of Share Registrars, and is supported by these entities.
- 2. It is important to ensure that the results of takeover offers are determined through objective procedures, minimising doubt and ensuring confidence among all parties involved. This Code of Practice mandates that acceptances and purchases counted towards fulfilling the acceptance condition are properly identified, allowing receiving agents to provide the necessary certificate as per Note 2 to Rule 30.2. Receiving agents must establish procedures to verify that no shareholding is counted twice across different categories.
- 3. The principles and procedures outlined under this Code of Practice must be followed in all cases unless prior consent is obtained from the Executive. Cooperation between the offeree company's registrar and the offeror's receiving agent is essential for timely execution of requisite procedures. For example, providing data in a convenient form for the receiving agent upon request, additionally, the registrar should provide changes to the register in a similar form when requested instead of a completely new register.
- **4.** Receiving agents can directly contact the Executive if they encounter insufficient cooperation or are given instructions contrary to this Code of Practice.

Qualifications for Acting as a Receiving Agent

5. To act as a receiving agent, an entity must either be a member of the Federation of Share Registrars or demonstrate to the Executive that it has the necessary experience and resources to act as the receiving agent.

The Provision of the Offeree Company's Register

6.

- (a) Upon the announcement of a firm intention to make an offer, the offeree company must instruct its registrar to provide an updated register to the offeror within 2 business days of the request which should reflect the position as at the close of business on the date of the request
- (b) The offeree company's registrar is required to maintain the register as up-to-date as possible and to ensure that it complies with paragraph (c) below. The updating procedures to the register should include all transfers, as well as all changes that will affect the register, for example grants of representation, marriage certificates, and address changes.
- (c) Daily updates to the register must be provided within 2 business days of notification of any transfer, and all documents leading to changes must be rapidly shared with the offeror. On the final register day, any information received by the offeree's registrar but not yet provided to the offeror's receiving agent must be available to the offeror's receiving agent by noon on the day before the offer's final closing date.
 - From the final register day until the offer is or is declared unconditional as to acceptances or lapses, the registrar must update the register and process all documents received by 1.00 p.m. on the final closing date by 5.00 p.m. on the final closing date. Copies of these documents must also be immediately relayed to the offeror's receiving agent.
- (d) The offeror's receiving agent should have access to the offeree company's registrar during office hours on business days during the period between the final register day and the time the offer becomes or is declared unconditional as to acceptances or lapses, and, if necessary, outside these hours with reasonable notice and consent from the registrar.

Counting of Acceptances

7. The offeror's receiving agent must ensure that all acceptances counted as valid comply with the requirements under Note 1 to Rule 30.2.

Counting of Purchases

8. The offeror's receiving agent must ensure that all purchases counted as valid comply with the requirements outlined in Note 7 to Rule 30.2, subject to Note 8 to Rule 30.2.

DISCLAIMERS IN RECEIVING AGENTS' CERTIFICATES

9. Certificates issued by the offeror's receiving agent should generally be unqualified, except for a disclaimer regarding the limitations of the receiving agent's responsibility

for third-party errors not evident from available documents. An acceptable disclaimer format is as follows:

"In issuing this certificate we have, where necessary relied on the following matters:

- (i) certifications of acceptance forms by the offeree company's registrar;
- (ii) certifications by the offeree company's registrar that a transfer of shares has been executed by or on behalf of the registered holder in favour of the offeror company or

its nominees;

(iii) confirmation from the offeror of the validity of shares recorded as registered holdings and purchases in the context of Note 8 to Rule 30.2.

As the offeror company's receiving agent, we have examined with due care and attention the information provided to us, and as appropriate, made due and careful enquiry of relevant persons, in order that we may issue this certificate and have no reason to believe that the information contained in it cannot be relied upon but, subject thereto, we accept no responsibility or liability whatsoever in respect of any error of the offeree company's registrar or the offeror company's buying broker for the matters set out above to the extent that we have relied upon them in issuing this certificate."

Variations to the above disclaimer will need to be approved by the Executive in advance.

Definitions:

"final register day" means the day which is 2 days before the final closing date of an offer, and "final closing date" means the 60th day or another specified date beyond which the offer will not be extended.

Schedule IX - REIT Guidance Note

Summary of this Schedule:

This Schedule IX elaborates on the applicability of the Codes to Real Estate Investment Trusts (REITs). While REITs must generally comply with the same principles and rules as other listed companies, the guidance provides necessary modifications to account for their unique structure and operations. Various provisions under the Codes are also amendment and clarified under the Guidance Note with respect to offers involving REITs.

1. Introduction

The SFC Guidance Note outlines how the provisions of the Codes apply to Real Estate Investment Trusts (REITs), with specific modifications.

The Guidance Note is designed to assist those involved with REITs in understanding the application of the Codes, emphasising that the spirit and letter of the Guidance Note will be applied by the Panel and the Executive to achieve the underlying purpose.

The General Principles of the Codes are applicable to transactions involving REITs.

2. Definitions

"Acting in concert" with respect to REITs shall include the presumptions set out under the Definitions section of the codes as well as new classes (10) and (11) as follows:

(10) a REIT is considered to be acting in concert with: (1) its management company (including any entities controlling, controlled by, or under common control with the management company); and (2) any director of such management company (along with their close relatives, related trusts, and any companies controlled by these directors, relatives or trusts).

Notes:

- The Executive must be consulted if a management company acts for multiple parties, such as an offeror or possible offeror, competing offeror or possible competing offeror, or offeree REIT.
- 2. The role of a management company under the REIT Code is distinct from that of a fund manager under class (4) or financial adviser under class (5), though these roles may overlap and the Rules may also apply to the management company acting for a REIT.
- (11) A REIT and its trustee are also considered to be acting in concert when acting in their respective capacities.

Notes:

- The Executive must be consulted if a trustee acts simultaneously as trustee for more than one entity, such an offeror or possible offeror, competing offeror or possible competing offeror, or offeree REIT.
- 2. Voting rights held by a trustee in its capacity of a trustee in unrelated trusts are generally not counted when calculating voting rights for a group acting in concert. Consultation with the Executive is required in cases of doubt.
- "Associate" with respect to REIT also includes (in additional to the definition of "associate" under the Definitions section of the Codes) new classes (7) and (8) as follows:
- (7) trustees of of an offeror, an offeror, offeree REIT, or any company under class (1) of the definition of acting in concert; and
- (8) management companies, persons controlling the management companies, and persons controlled by or under the same control as the management company of an offeror, an offeror, offeree REIT, or any company under class (1) of the definition of acting in concert.
- "Board" refers to a management company and/or its board of directors.
- "Company" can refer to a REIT and/or a company, depending on the context.

Note:

The concepts of parent, subsidiary, fellow subsidiary, and associated company applies to REITs.

- "Connected fund manager and connected principal trader" includes (in addition to those under the Definitions section of the Codes) new class (5) as follows:
- (5) the management company of an offeror or offeree REIT.
- "Constitutive documents" are defined according to the REIT Code.
- "Director(s)" includes a management company, one or more of its directors, and any individuals whose instructions the management company or its directors typically follow.

Note:

The term "directors" in the context of acting in concert includes the management company of a Real Estate Investment Trust (REIT) and entities controlling, controlled by, or under the same control as the management company.

- "Employee share scheme" encompasses any scheme of a management company related to the REIT it manages.
- "General meeting" refers to a meeting of REIT unitholders held as per the REIT's constitutive documents.
- "Management company" is defined according to the REIT Code.

"Pension funds" and "Provident funds" include those of a management company established in connection with the REIT it manages.

"REIT" and "REIT Code" are defined by the Code on Real Estate Investment Trusts.

"Shares" refer to the units of a REIT.

"Share capital", "Issued share capital", "Equity share capital" or "Equity shares" refer to the units of a REIT which are issued and outstanding from time to time.

"Shareholders" are the unitholders of a REIT.

"Special purpose vehicles" are defined according to the REIT Code.

"Trustee" is a person appointed to act as trustee of a REIT.

Notes to Definitions:

- Actions by a trustee or management company, or their directors, on behalf of a REIT
 are considered actions of the REIT itself. Consultation with the Executive is advised in
 case of doubt.
- 2. Voting rights owned, controlled, or held by a trustee or management company, or their directors, on behalf of a REIT are considered as those of the REIT. Consultation with the Executive is advised in case of doubt.
- **3.** Assets owned, controlled, or held by special purpose vehicles are considered as assets of the REIT that owns or controls these vehicles, as per the REIT Code. Consultation with the Executive is required in case of doubt.

3. Clarification of various provisions of the Codes

- (a) Paragraph (i) of Note 7 to Rule 2 of the Takeovers Code is modified for REITs, which shall state that a proposal may render a REIT unsuitable for authorisation by the Securities and Futures Commission (SFC) under section 104 of the Securities and Futures Ordinance (Cap. 571).
- **(b)** For Rule 2.8 and Note 2 to Rule 7 of the Takeovers Code, "director(s)" is amended to refer to the directors of the relevant management company of the REIT.
- **(c)** When a REIT is the offeror, announcements of firm intention to make an offer must also include the identity of the management company and the trustee of the REIT, in addition to the information required under Rule 3.5(b) of the Takeovers Code.
- (d) Rule 4 of the Takeovers Code prohibits any frustrating action by the offeree REIT, its management company, directors, or trustee (as trustee of the offeree REIT) without unitholder approval. additional to Rule 4 of the Takeovers Code, other prohibited actions includes altering terms of engagement with the management company or altering or entering into service contracts with directors outside the ordinary course of business.

- **(e)** References to "directors' service contracts" include contracts between the management company and its directors, and any service contract with the management company of the REIT. Consultation with the Executive is advised in case of doubt.
- **(f)** Information issued by associates should consider classes (7) and (8) of the "associate" definition under this Guidance Note, as per Note 4 to Rule 8.1 of the Takeovers Code.
- (g) If a management company or its directors face compliance issues with Rule 7 and Rule 26.4 of the Takeovers Code due to other rules, regulations or REIT constitutive documents, consultation with the Executive is necessary.
- **(h)** For REITs involved in offers, relevant constitutive documents must be available for inspection, in addition to those required by Note 1 to Rule 8 of the Takeovers Code.
- (i) A dividend forecast for a REIT is typically treated as a profit forecast under Rule 10.6(d) of the Takeovers Code. Consultation with the Executive is recommended if there is uncertainty.
- (j) Convertible securities in a REIT context under Rule 13 of the Takeovers Code include those issued by a REIT's special purpose vehicles that are convertible into REIT units, whether or not guaranteed by the REIT.
- (k) Offers to REIT unitholders related to or including a proposal to delist REIT units from the Stock Exchange and a proposal that could render a REIT as unsuitable for authorisation by the SFC under section 104 of the Securities and Futures Ordinance must remain open for acceptance longer than typically required by Rule 15.3 if it becomes unconditional in all respects. The written notice period will also be extended correspondingly. The offer document must clearly explain the proposal's implications to unitholders who have not accepted the offer.
- (I) For Rule 26.1 of the Takeovers Code, the lowest percentage holding for the 12 months preceding 25 June 2010, is deemed to be the percentage holding at the start of 25 June 2010.
- (m) In terms of requisitioning shareholding meetings after a takeover offer for a REIT becomes unconditional in all respects, the trustee of the REIT must comply with Rule 31.5(ii) of the Takeovers Code. Consultation with the Executive is advised if there is uncertainty.
- (n) If the offeree company is a REIT, the offeror must disclose intentions regarding the REIT's continued operation, major operational changes (including any redeployment of the assets of the REIT, any proposed change of the property management company and any transitional arrangements), investment policy changes, management company changes, the long-term commercial justification for the proposed offer, and the REIT's listing status, rather the usual disclosure requirements under paragraph 3 of Schedule I or paragraph 4 of Schedule III of the Codes.

- **(o)** For REITs acting as offerors in securities exchange offers, instead of the standard disclosure requirements, the date of establishment and the governing law of the offeror must be disclosed.
- (p) In cases where the offeree company is a REIT, the disclosure obligations under paragraph 2 of Schedule II and Note 2 extend to any person who is an associate of the offeree company, as defined by classes (7) and (8) of the definition of associate.

4. Early consultation

The Guidance Note also emphasises the importance of early consultation with the Executive, indicating that such consultation is essential.



