



HK Takeovers and Share Buy-backs Codes Amended 29 September 2023

On 21 September 2023, the Hong Kong Securities and Futures Commission (the **SFC**) published its [Consultation Conclusions](#) on proposed amendments to the Codes on Takeovers and Mergers and Share Buy-backs (the **Hong Kong Takeovers Code**). For a summary of the original [Consultation Paper](#), please see Charltons' [June 2023 newsletter](#). The amended Hong Kong Takeovers Code was gazetted and took effect on 29 September 2023.

During the consultation period, the SFC received 12 responses from various stakeholders and, after reviewing the feedback, the SFC decided to adopt all of the proposed amendments as set out in the Consultation Paper, with some slight modifications.

1. Clarification of Voting, Acceptance and Concert Party Requirements on Takeovers Code Transactions

Expanded definition of "close relatives"

To codify existing practice, the definition of "close relatives" has been expanded to include the following:

- the person's grandparents and grandchildren;
- the person's siblings, their spouse or de facto spouse and their children; and
- the parents and siblings of the person's spouse or de facto spouse.

The revised definition clarifies that "children" include natural, adopted and step-children. The SFC will allow applications to rebut the presumption of acting in concert on the basis of being a close relative and, as in other cases, the burden of proof is on the applicant. However, the SFC noted in the Consultation Paper that it is unlikely to accept arguments that parties are not in regular contact, or have not seen each other for a period, as grounds for rebutting the presumption unless there is corroborative evidence (e.g. litigation between family members evidencing a breakdown of the family relationship)¹.

Revised definition of “voting rights”

The definition of “voting rights” is relevant to determining whether there has been an acquisition of “control” of a Hong Kong-listed company (**HKEX-listed company**) (or other company to which the code applies²). “Control” is defined as holding 30% or more of a company’s voting rights which were previously defined as “voting rights *currently* exercisable at a general meeting of a company whether or not attributable to the share capital of the company” (*emphasis added*). That definition has now been amended to clarify that voting rights are regarded as exercisable at a general meeting irrespective of any restrictions on their exercise (e.g. by agreement between the parties, by operation of law and regulations, or under a court order), except for the voting rights attached to treasury shares. Accordingly, if a person acquires 30% or more of an HKEX-listed company’s voting rights, they will be required to make a mandatory general offer under Rule 26.1 of the Hong Kong Takeovers Code even if the voting rights are subject to an injunction prohibiting that person from exercising them.

Shareholders’ approval and acceptance: Note to Rule 2.2(c) of the Hong Kong Takeovers Code

Under Rule 2.2(c) of the Hong Kong Takeovers Code, a shareholders’ resolution approving an HKEX-listed company’s delisting after a proposed offer must be subject to the offeror being entitled to exercise, and exercising, rights to compulsorily acquire the remaining shares. If an offeree company is incorporated in a jurisdiction without compulsory acquisition rights, the SFC will waive the requirement provided the three conditions set out in the Note to Rule 2.2 are met. In particular, in addition to obtaining the requisite shareholders’ approval, the offeror must receive valid acceptances of 90% of the disinterested shares. However, condition (iii) to the Note to Rule 2.2 was previously silent as to whether purchases made by an offeror and its concert parties could be included when determining whether the 90% of disinterested shares threshold has been met.

The SFC has now revised condition (iii) of the Note to Rule 2.2 to expressly include purchases made by the offeror and persons acting in concert with it from the date of the announcement of a firm intention to make an offer, when determining whether the 90% of the disinterested shares threshold has been met.

Rule 2.11 of the Hong Kong Takeovers Code

Rule 2.11 requires an offeror and its concert parties to have acquired 90% of the offeree company’s disinterested shares before exercising its compulsory acquisition rights. The language of Rule 2.11 previously only allowed purchases made by an offeror and its concert parties during the period of 4 months after the posting of the initial offer document, together with acceptances, to count towards the 90% threshold.

To align with Rule 2.2, Rule 2.11 has been amended so that purchases made by an offeror and its concert parties from the date of the announcement of a firm intention to make an offer until the end of 4 months after the posting of the initial offer document can count (with acceptances) towards the 90% of the offeree company’s disinterested shares threshold for the purpose of the offeror’s entitlement to exercise its compulsory acquisition rights.

Rules 2.2 and 2.10 of the Hong Kong Takeovers Code

Rules 2.2(a) and 2.10(a) have been amended so that an offeror and its concert parties can attend and vote at meetings held to consider a scheme of arrangement, capital reorganisation or delisting proposal, although their votes do not count in determining whether the requirements of those rules (including the voting thresholds) have been met. The rules now refer to approval of the scheme of arrangement, capital reorganisation or delisting by at least 75% of the votes attaching to the disinterested shares that are cast either in person or by proxy at a duly convened meeting of “shareholders” (rather than of “disinterested shareholders”).

Rules 2.2 and 2.10 were previously silent as to what procedures need to be complied with for convening a shareholder meeting. To clarify the uncertainty regarding the form of shareholders’ meeting, Note 8 to Rule 2 has been added stating that a “duly convened meeting of shareholders”, for the purposes of Hong Kong Takeovers Code Rules 2.10 and 2.2, “refers to a shareholders’ meeting duly convened in accordance with the offeree company’s constitutional documents and the company law of its place of incorporation”.

Note 4 to Rules 3.1, 3.2 and 3.3 of the Hong Kong Takeovers Code - Irrevocable commitments

To streamline the process for offerors to gather irrevocable commitments, Note 4 to Rules 3.1, 3.2 and 3.3 and [Practice Note 12](#) have been amended so that an offeror is not required to consult the Takeovers Executive³ (the

Executive) before approaching a shareholder with a material interest. A shareholder has a material interest if they and their concert parties have direct or indirect control of 5% or more of an offeree company's voting rights. Offerors will only need to consult the Executive if they intend to approach shareholders without a material interest in the offeree company. They will also be restricted to approaching a maximum of six shareholders, regardless of whether they have a material interest or not. Revised [Practice Note 12](#) includes guidance on the "rule of six" and clarifies that in situations where a Special Purpose Vehicle (**SPV**) has a material interest in an offeree company, the SPV and its ultimate beneficial shareholders will be considered as a single shareholder. The revised Practice Note also requires offerors to provide to the Executive a list of shareholders that it has approached. If a draft possible offer announcement or Rule 3.5 announcement has been submitted for vetting, the list of shareholders who have been approached should be provided by no later than 12:00 noon on the business day after the approach was made. Where shareholders with material interests are approached, the list should be submitted with the first draft of the possible offer announcement or Rule 3.5 announcement.

2. The Chain Principle

The chain principle applies where a mandatory general offer obligation for a second company (a chain principle offer) arises following an acquisition of statutory control of a company (the first company) where a person or group of persons obtains or consolidates control over the second company because the first company controls the second company. Note 8 to Rule 26.1 of the Hong Kong Takeovers Code sets out the two key tests for determining whether a "chain principle offer" is required: the Substantiality Test and the Purpose Test.

The Substantiality Test has been amended to:

- add market capitalisation as one of the parameters for comparison where both companies are listed when determining the Substantiality Test; and
- codify existing practice of looking at at least the three most recent financial periods when calculating whether the Substantiality Test produces an anomalous result.

The SFC has also updated [Practice Note 19](#) to provide further guidance on the Executive's approach to the Substantiality Test. This includes guidance on the specific line items for assets and profits that are required to be taken into account and on market capitalisation reference dates. [Practice Note 19](#) also clarifies that a single factor of more than 60% may not by itself trigger a mandatory general offer under the chain principle: each case will be assessed by taking into account all the relevant facts and circumstances.

3. Offer Periods and Timetable

Definition of "offer period"

Many of the Hong Kong Takeovers Code's obligations are triggered on the commencement of an offer period. The SFC noted in the Consultation Paper that offeree companies experiencing financial difficulties and companies whose controlling stake is in receivership often find themselves in prolonged offer periods that render ongoing compliance with the relevant Takeovers Code requirements (e.g. the publication of monthly updates) unnecessarily burdensome. The SFC also considered that the fact that a company continued to be subject to an offer period risked misleading the market into believing that there was the prospect of a takeover offer.

The SFC issued [Practice Note 24](#) in November 2022 providing guidance on when an offer period should start when receivers or liquidators are appointed. However, once commenced, an offer period did not end under the previous version of the Takeovers Code until one of the situations under the definition of "offer period" was met (i.e. the offer closed for acceptances, lapsed, was withdrawn, did not proceed or, if an offer allowed alternative forms of consideration to be elected, the last date for making that election was reached).

To tackle the practical concerns related to protracted offer periods, the definition of "offer period" has been revised to give the Executive explicit power to terminate an offer period. The Consultation Conclusions note that the Executive will only exercise that power in limited situations, particularly if it is clear to the Executive that there is no real prospect of a change of control of the offeree company or offers being made in the foreseeable future.

Last possible day for Day 60 in privatisations and take-private transactions

To codify existing practice and to align with the spirit of Rule 2.11, Rule 15.5 has been amended so that Day 60 (the last day on which an offer must be declared unconditional as to acceptances) cannot be extended beyond the

date that is four months after the date of the initial offer document.

Put up or shut up (PUSU) Orders

The Executive has in the past granted a PUSU order (i.e. an order requiring a potential offeror to announce its firm intention to make an offer within a set time period (put up), or to announce that it will no longer proceed with an offer (shut up)) on request by an offeree company. There was, however, no express provision in the Hong Kong Takeovers Code empowering the Executive to issue a PUSU Order. The Executive would also invite offeree companies to apply for a PUSU Order if they had already been subject to an extended offer period without the offeror announcing a firm intention to make an offer. However, the Executive had no power to impose a PUSU order on an offeror if the offeree company failed to request one, which was often the case where the potential offeror was the offeree company's controlling shareholder.

As proposed in the Consultation Paper, new Rule 3.9 has been introduced, giving the Executive the power to impose PUSU orders in exceptional circumstances either in response to a request from an offeree company or on its own initiative.

The note to Rule 3.9 provides that in deciding whether to impose a PUSU order and the time limit to be imposed on the offeror, the Executive will consider all relevant factors including (without limitation):

- the current duration of the offer period;
- the reason(s) for the offeror's delay in issuing a firm intention announcement;
- the proposed offer timetable (if any);
- any adverse effects that the offer period has had on the offeree company; and
- the conduct of the parties to the offer.

New Rule 3.9 is one of the Takeovers Code Rules that apply to share buy-back transactions and is now included in the list set out in Rule 5.1(c) of the Hong Kong Code on Share Buy-backs.

Settlement of consideration and return of share certificates

Rules 17 and 20.2 have been amended to align the timing for the return of share certificates with the timing for settlement of consideration for an offer to require the return of share certificates within seven business days after the relevant event.

Successful offers

In successful offers, share certificates for untaken shares (i.e. shares that have been tendered for acceptance by a shareholder but not taken up by the offeror) and untendered shares (i.e. shares that are not tendered for acceptance represented in a share certificate which also represents shares that the shareholder tenders for acceptance) in an offer (including partial offers) or a share buy-back by way of general offer must be posted to, or be made ready for collection by the accepting shareholder, at the same time as the payment of consideration by the offeror, and in any event no later than 7 business days after the later of: (i) the date the offer becomes, or is declared, unconditional; and (ii) the date of receipt of a duly completed acceptance (Rule 20.2(a)). In the case of partial offers, the deadline for the return of share certificates will be 7 business days after the close of the partial offer.

Unsuccessful offers

If an offer is withdrawn or lapses, the offeror must, as soon as possible but in any event no later than 7 business days after the offer is withdrawn or lapses, post the share certificates lodged with acceptance forms to, or make the share certificates available for collection by, the offeree company shareholders who accepted the offer (Rule 20.2(b)).

Withdrawing shareholders

Rule 17 allows an accepting shareholder to withdraw their acceptance of an offer after 21 days from the first

closing date of the offer if the offer has not become unconditional as to acceptances. Under revised Rule 17, an offeror is required to return share certificates to accepting shareholders who withdraw their acceptance within 7 business days after receipt of the notice of withdrawal of acceptance.

Timing of resignation of offeree company directors

To clarify the exact time when the resignation of an offeree company director can take effect, Rule 7 has been amended to provide that the resignation of an offeree company director cannot take effect until after the publication of the closing announcement on the first closing date of the offer, or the publication of an announcement that the offer has become or been declared unconditional, whichever is later. In the case of a transaction involving a whitewash waiver, an offeree company director's resignation cannot take effect until after the publication of the results announcement for the shareholders' meeting to approve the waiver.

Other timing "housekeeping" amendments

To remove possible confusion due to the use of different wording, a number of housekeeping amendments have been made to provisions specifying an applicable period of time. These amendments were set out in Appendix 2 to the Consultation Paper.

Rule 15.7 of the Hong Kong Takeovers Code

Under Rule 15.7 of the Hong Kong Takeovers Code, all conditions must be fulfilled or the offer will lapse within 21 days of the later of: (i) the first closing date; or (ii) the date when the offer becomes or is declared unconditional. In the context of privatisations by scheme of arrangement, this means that the period between the date of the court meeting (which is equivalent to the date when an offer becomes unconditional as to acceptances) and the effective date of the scheme cannot exceed 21 days without the consent of the Executive.

A note to Rule 15.7 has been added to provide that the Executive's consent will not be required in cases where the 21-day requirement cannot be met in cases of privatisation by way of scheme of arrangement (i.e. when the effective date of a scheme is more than 21 days after the date of the court meeting) as a result of the court's timetable, which is beyond the control of the offeree company.

4. Offer Requirements

Disclosure of offer price in talks announcements

Issue [37 \(June 2016\)](#) of the Takeovers Bulletin advised parties to maintain confidentiality and take all necessary steps to prevent leakage of information before the announcement of a firm intention to make an offer. If confidentiality is maintained, the offeree need not issue a "talks announcement" under Rule 3.7. Once an offeree company board has been approached or informed of a possible offer, it is imperative that confidentiality is maintained. The Executive adopts a strict approach on the issue of "talks announcements" to prevent the announcement being used to condition the market and mitigate the risk of the offeree's trading price being impacted by the announcement of negotiations which may or may not proceed to an offer. Where the obligation to make a "talks announcement" arises under Rule 3.7, it is expected to be fairly short and to disclose only the fact that talks are taking place. This message has been conveyed and elaborated on in Takeovers Bulletin Issues [40 \(March 2017\)](#) and [53 \(June 2020\)](#). It will not normally be acceptable for talks announcements to disclose the indicative offer price or the form of consideration where these have been communicated to the offeree board, given that an offer will not necessarily materialise. The Consultation Paper noted however that overseas listed offerors or dual-listed offeree companies are sometimes required by overseas regulatory requirements to disclose the offer price before a firm intention announcement can be made, and that the Executive has required the disclosure of the offer price (whether indicative or otherwise) to be accompanied by a statement that the price disclosed will be the floor price for any subsequent offer.

As proposed in the Consultation Paper, Note 4 to Rule 3.7 has been introduced to codify the Executive's existing practice by providing that the disclosure of an indicative offer price is not normally permitted before the announcement of a firm intention to make an offer, unless there are exceptional circumstances. The SFC provides some examples in the Consultation Conclusions of what could be considered exceptional circumstances, which include the need to clarify an incorrect market rumour or incorrect statement in the media which may be creating a false market in the shares of the offeree company, or where an offeror or an offeree company is required by overseas regulatory requirements to disclose an offer price prior to the announcement of a firm intention to make an offer. In exceptional circumstances where an indicative offer price is allowed to be disclosed, this will be the

floor price for any subsequent offer.

Note 3 to Rule 3.7 has been added to codify existing practice that a potential offeror who makes a statement in relation to the terms of a possible offer prior to an announcement of a firm intention to make an offer will be bound by that statement if an offer for the offeree company is subsequently made, unless the right not to be bound was specifically reserved at the time the statement was made or there are wholly exceptional circumstances.

The Consultation Conclusions note that while a potential offeror may be able to deviate from previously announced terms if it specifically reserved that right and the circumstances for exercising it have arisen (under Note 3), it will never be allowed to revise a previously announced offer price.

Deduction of dividends from offer price

To codify the effect of dividends and withholding tax on the offer price, Note 11 to Rule 23.1 and Note 3 to Rule 26.3 of the Hong Kong Takeovers Code have been amended to provide that:

- an offeror cannot deduct from the offer consideration the amount of a dividend (or other distribution) subsequently paid or payable to offeree company shareholders by the offeree company, unless it has specifically reserved its right to do so in an announcement;
- where the payment of a dividend (or other distribution) is subject to withholding tax or other deductions, the offer consideration should be reduced by the gross amount received or receivable by the offeree company shareholders; and
- where an offeror has made a no increase statement to which Rule 18.3 applies and a dividend (or other distribution) is subsequently paid or becomes payable by the offeree company to offeree company shareholders, the offeror must reduce the offer consideration by an amount equal to that dividend (or other distribution) so that the overall value receivable by the offeree company shareholders remains the same, unless, and to the extent that, the offeror has stated that offeree company shareholders will be entitled to receive all or part of a specified dividend (or other distribution) in addition to the offer consideration.

5. Partial Offers

Offer periods relating to partial offers

Rule 28.4 has been amended to provide that:

- if, on a closing day, acceptances received equal or exceed the precise number of shares stated in the offer document under Rule 28.7, the offeror must declare the partial offer unconditional as to acceptances and extend the final closing day to the 14th day thereafter. The offeror cannot further extend the final closing day;
- if the acceptance condition is fulfilled before the first closing day, the offeror must declare a partial offer unconditional as to acceptances on the day the acceptance condition is met, and the offer must remain open for acceptances for at least a further 14 days; and
- if the acceptance condition is satisfied after the first closing day during an extended offer period, the offeror must declare a partial offer unconditional as to acceptances on the day the acceptance condition is met, and the final closing day must be extended to the 14th day thereafter.

Rule 28.5 also imposes a “tick-box” approval condition which requires a partial offer to be conditional on majority approval from independent shareholders if an offer could result in an offeror holding 30% or more of a company. The Consultation Paper noted that the previous cross-reference to Rule 28.5 in Rule 28.4 had proved confusing and resulted in Rule 28.4 being wrongly interpreted to mean that the restriction on extending an offer period takes effect only when the offer has become unconditional both on acceptances and Rule 28.5 approval.

Rule 28.4 has been revised to clarify that the restrictions on extending the final closing day under that rule apply irrespective of whether “tick box” approval (if required) under Rule 28.5 has been obtained. A Note has also been added to Rule 28.4 which provides that:

- a partial offer must stay open for a minimum of 21 days; and

- where an offer is subject to a condition that the approval required under Rule 28.5 is obtained, the Executive will not consider that condition as part of the acceptance condition for the offer. Accordingly, if the acceptance condition has been met on the first closing day, but Rule 28.5 approval has not been obtained, Rule 28.4 will be triggered so that the offer can only be extended for a further 14 days (which will be the final closing day). Rule 28.5 approval must be obtained by the final closing day, otherwise the offer will lapse.

Comparable offers for convertible securities, warrants, etc. on partial offers

To codify market practice, new Rule 28.10 has been added providing that when a partial offer could result in the offeror holding at least 30% of the voting rights and the offeree company has convertible securities, warrants, options, or subscription rights outstanding, the offeror is required to make a comparable offer or proposal to the holders of these securities to which the Rule 13 requirements will apply.

Tick-box approval in partial offers

Rule 28.5 has been amended to clarify that the “tick box” approval condition does not apply to partial offers where the offeror and its concert parties already hold more than 50% of the offeree (i.e. offers within Rule 28.1(b)).

Acceptance and approval of partial offers by exempt principal traders

To extend the rules governing acceptances and voting by exempt principal traders to partial offers, Note 3 to Rule 28 has been introduced providing that partial offers are subject to the application of both Rule 35.3 and Rule 35.4. As a result:

- shares held by exempt principal traders connected with an offeror must not be assented to an offer, until the offer becomes or is declared unconditional as to acceptances; and
- shares held by an exempt principal trader connected with an offeror or the offeree company must not be voted in the context of an offer. This includes the approval of an offer under Rule 28.5.

6. Green Initiatives

Electronic dissemination of documents

Rule 8.7 has been introduced which provides the offeror and offeree company with the option of disseminating documents under the Hong Kong Takeovers Code electronically, to the extent this is permitted under applicable laws and regulations, including the Hong Kong Listing Rules, and the companies’ constitutional documents.

Language preference

Note 2 to Rule 8.6 has been introduced permitting issuers to send physical copies of documents in either English or Chinese, as long as arrangements are in place to ascertain the language preference of the recipient.

Publication of announcements in respect of unlisted offerees

The SFC previously required unlisted offeree companies that are public companies within section 4.2 of the Introduction to the Hong Kong Takeovers Code to publish their announcements in a leading English and a leading Chinese newspaper. The SFC has removed this requirement from Rule 12.2.

Submissions to the Executive

Sections 8.1 and 8.2 of the Introduction to the Hong Kong Takeovers Code and Rule 12.1 have been amended to require all submissions (including draft documents, ruling applications, financial resources confirmations, no material change confirmations and other reports, letters and confirmations required under the Hong Kong Takeovers Code and Practice Note 20) to be made electronically by email to cfmailbox@sfc.hk, unless directed otherwise. It will continue to accept fees for document vetting and ruling applications by cheque or telegraphic transfer.

7. Other Hong Kong Takeovers Code Amendments

Definition of on-market share buy-backs

An on-market share buy-back is not generally subject to any requirements under the Hong Kong Takeovers Code provided that it does not have any general offer implications. However, off-market share-buy backs are subject to strict requirements under the Hong Kong Takeovers Code including the approval of at least 75% of the company's independent shareholders.

To clarify that "on-market share buy-backs" as defined under the Hong Kong Takeovers Code are not the same as share purchases "on the Exchange", the term used in the Hong Kong Stock Exchange's Listing Rules, the definition of "on-market share buy-back" has been amended. The revised definition clarifies that to count as an "on-market share buy-back", a share buy-back must be made by a listed company through the automatic order matching system of the Hong Kong Stock Exchange or a recognised exchange where the company buying back its shares and its directors have no involvement (direct or indirect) in the solicitation, selection or identification of the sellers of the shares.

A Note has been added to the definition to clarify that the appointment of a broker to effect buying-back of shares would not in itself be treated as the company or its directors being involved in the solicitation, selection or identification of sellers of shares.

Disclosure of special deals in firm intention announcements

To codify routine disclosure requirements, the prescribed disclosure for announcements of a firm intention to make an offer under Rule 3.5 has been revised to require disclosure of any special deals or an appropriate negative statement. The required disclosure for offer documents and offeree board circulars, as set out in Schedules I and II to the Hong Kong Takeovers Code, respectively, has also been amended to require disclosure of special deals.

Disclosure of offeror and offeree relevant securities on commencement of offer periods

Rule 22 of the Hong Kong Takeovers Code requires the disclosure of dealings in relevant securities by the offeror and offeree and their respective associates during the offer period. Note 14 to Rule 22 has been added to remove the requirement for class (6) associates (i.e. holders of 5% or more) of the offeror to disclose their dealings in relevant securities of the offeree during a cash offer.

Frustrating actions

Rule 4 has been amended to clarify that the following frustrating actions listed in Rule 4 are merely examples of events that might constitute frustrating actions and are not a definitive or exhaustive list of the events that may be frustrating actions:

- share issues;
- the issue or grant of convertible securities, options or warrants for the offeree company's shares;
- the sale, disposal or acquisition of assets of a material amount;
- the entering into of contracts, including service contracts, otherwise than in the ordinary course of business; and
- causing the offeree or its subsidiary or associated company to buy back, purchase or redeem any shares in the offeree or providing financial assistance for any such buy-back, purchase or redemption.

Prior contractual obligations

Rule 4 has also been amended to provide that where the offeree company is under a prior contractual obligation to take a particular action, the requirements of Rule 4 do not normally apply. However, if there are special circumstances, these should be brought to the Executive's attention as soon as possible to confirm whether Rule 4 applies. The Executive may grant a waiver of the shareholders' approval requirement in appropriate circumstances. In the Consultation Paper, the SFC gave as an example of "special circumstances" which the Executive would likely consider to be frustrating actions, the situation where obligations are put in place but are not enforceable or triggered until a takeover offer is made for the offeree company, for example a "poison pill".

Offeror's consent

Note 1 to Rule 4 has been amended so that a shareholders' meeting is not required if the offeror agrees to the corporate action being taken by the offeree. Where an announcement is made, it will be sufficient to include a statement confirming that the offeror's consent has been obtained. If no announcement will be made (for example, because the relevant corporate action is not a notifiable transaction under the Hong Kong Listing Rules), the offeror's consent to the corporate action will need to be lodged with the Executive. If there are competing bids, consents from all named offerors or potential offerors will need to be obtained before the shareholders' approval requirement can be dispensed with.

Disclosure of market prices of offeree company's and offeror's securities

Paragraph 10 of Schedule I to the Hong Kong Takeovers Code sets out certain disclosure requirements relating to the closing price of the securities of the offeree company and the securities of the offeror (if the consideration for the offer involves the offeror's securities). To codify the Executive's existing disclosure requirements, a new note to paragraph 10 of Schedule I has been added stating that where trading of securities is halted or suspended during a trading day, the closing price on the last full trading day and the trading price immediately before the halt or suspension should be disclosed.

Application of Rule 31.1 in whitewash transactions

Rule 31.1 has been included in the list of Hong Kong Takeovers Code requirements applicable to whitewash transactions in amended paragraph 2(d) of Schedule VI. Rule 31.1 of the Takeovers Code provides that where an offer has been withdrawn or has lapsed, the offeror and any person who acted in concert with it in relation to that offer (and any person who subsequently acts in concert with any of them) are prohibited for 12 months from the date of withdrawal or lapse of that offer from: (i) announcing another offer or a possible offer for the offeree company; or (ii) acquiring any offeree company shares which would result in an obligation to make a mandatory general offer under Rule 26, except with the consent of the Executive (Rule 31.1(a)). However, the amendments do not prevent a person from entering into repeated non-waivable whitewash transactions since subsequent offers will not be made if the whitewash condition is not approved by shareholders.

Application of Rule 3.8 to share buy-backs by way of general offer

Rule 5.1(c) of the Code on Share Buy-backs has been amended to include Rule 3.8 (the obligation on offeror and offeree companies to announce details of relevant securities) as one of the Takeovers Code rules that apply to share buy-backs by way of general offer. The aim is to assist investors in complying with Hong Kong Takeovers Code requirements and, in particular, in determining whether they are class (6) associates who need to disclose their dealings under Rule 22. New Rule 3.9 on put up or shut up orders has also been included in the list of applicable Takeovers Code provisions under Rule 5.1(c).

8. Housekeeping Amendments

Paragraph 2(a) of Schedule VI has been amended to align with paragraph 3 of Schedule VI which states that there should be no disqualifying transactions from 6 months prior to the announcement of the whitewash proposals and up to the completion of the subscription.

[1] SFC. (2023). 'Consultation paper on proposed amendments to the Codes on Takeovers and Mergers and Share Buy-backs'. P. 9 at paragraph 6

[2] The Takeovers Code also applies to companies determined to be "public companies" according to the factors set out in 4.2 of the Introduction to the Code

[3] The "Takeovers Executive" is the Executive Director of the SFC's Corporate Finance Division or his/her delegate

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