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# **Hong Kong**

## Takeover Guide

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## INTRODUCTION

This guide provides an overview of the regulations governing the takeovers of public companies in Hong Kong. It contains information concerning regulatory requirements and restrictions on takeovers, some practical tips and methods of privatisation in Hong Kong.

This guide deals with the main rules on takeovers in Hong Kong as at January 2007. This is an introduction only and should not be treated as advice on specific situations. One should seek advice from specialists before getting involved in takeover business in Hong Kong.

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## STRUCTURE OF THE MARKET

The ownership of most Hong Kong public companies is highly concentrated and quite often controlled by families or small groups of shareholders. These family groups are able to appoint and remove the Board of Directors without the support of other shareholders. Therefore, most companies are not vulnerable to a hostile takeover bid and hostile takeovers are rare in Hong Kong, though not unknown.

The most common way of gaining control over a Hong Kong public company is by buying a controlling stake in the company from its controlling shareholder(s). Once this is done, the purchaser is obliged to make a mandatory general offer. Depending on the response of the minority shareholders, this may or may not result in the privatisation of the company.

If the objective is to privatise the public company, this can be achieved by making a general offer followed by a compulsory acquisition process where the dissenting or non-responsive shareholders are bought out. Recommended privatisation offers can also be structured as a scheme of arrangement under the Companies Ordinance. When the scheme is duly approved, it will be binding on all members of the relevant class of shares and on the company. In many cases, this may offer a more effective way of buying out minority shareholders than a straightforward voluntary offer.

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## TAKEOVER REGULATORY FRAMEWORK

Public takeovers are primarily governed by the Code on Takeovers and Mergers and Share Repurchases (the Code), which is modelled on the UK's City Code. The current version of the Code was issued in 2005 by the Securities and Futures Commission (SFC). The SFC administers the Code through the Executive Director of the Corporate Finance Division (the Executive).

The Code applies to takeovers and mergers affecting public companies in Hong Kong and companies with a primary listing of their equity securities in Hong Kong, including voluntary offers, partial offers (an offer for less than 100% of the voting rights of the target) and mandatory offers. The SFC will apply an economic or commercial test to determine whether an unlisted company is a public company in Hong Kong.

However, those who wish to take advantage of the securities markets in Hong Kong are expected to conduct themselves in accordance with the Code in matters relating to takeovers and mergers. If they do not do so they may find, by way of sanction, that the facilities of such markets are withheld. Companies listed in Hong Kong are expressly required to comply with the Code under the Hong Kong Stock Exchange's Listing Rules.

In addition to the Code, compliance may also be required with various existing statutes and other regulations:

- Stock Exchange's Listing Rules (Listing Rules) – a bidder listed on the Main Board or the GEM Board of the Hong Kong Stock Exchange are subject to the Stock Exchange's Listing Rules and the compliance measures that need to be taken would depend on the size of the offer;
- Companies Ordinance – companies incorporated in Hong Kong and to a lesser extent, overseas incorporated companies with offices in Hong Kong are regulated by the Companies Ordinance. It sets out the general law with regard to the conduct of the affairs of Hong Kong companies and contains certain controls over corporations incorporated outside Hong Kong, primarily relating to the offer for sale of their shares and debentures in Hong Kong;
- Securities and Futures Ordinance (SFO) – requires, among other things, the disclosure of interests of persons in 5% or more of the voting shares of companies listed on the Hong Kong Stock Exchange and the interests of directors; and prohibits insider dealing in listed securities and derivatives of listed corporations.
- regulatory provisions designed to control ownership in certain industries – for example, banking, insurance, securities and commodities trading, telecommunications and television;
- laws of overseas jurisdictions of incorporation – many companies listed on the Stock Exchange are incorporated outside Hong Kong, particularly in the Chinese Mainland, Bermuda and the Cayman Islands. Therefore, the laws of those other jurisdictions may need to be considered, for example, where a takeover is to be effected by way of a scheme of arrangement or where the holdings of minority shareholders are to be compulsorily purchased.

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## PURPOSE AND GENERAL PRINCIPLES

### The purpose of the Code

The Code provides an orderly framework within which takeovers and mergers are to be conducted. It is intended to:

- afford fair treatment to shareholders by requiring equality of treatment of shareholders;
- mandate disclosure of timely and adequate information in order to enable shareholders to make an informed decision as to the merits of an offer;
- ensure that there is a fair and informed market in the shares of companies affected by takeovers, mergers and share repurchases.

### General principles

The Code sets out ten general principles of conduct, which may be summarised as follows:

- all shareholders are to be treated similarly;
- if control of a company changes, a general offer is normally required;
- during the course of an offer, equal dissemination of information to all shareholders is required;

- an offeror should announce an offer only after careful and responsible consideration;
- shareholders should be given sufficient information, advice and time to reach an informed decision on an offer;
- all persons should make full and prompt disclosure to avoid the creation of a false market;
- rights of control should be exercised in good faith and the oppression of minority or non-controlling shareholders is unacceptable;
- directors should act in accordance with their fiduciary duties;
- no frustration action, that is. after a bona fide offer has been communicated to the board of the offeree company, or after the board of the offeree company has reason to believe that a bona fide offer might be imminent, the offeree board may not take action to effectively frustrate the offer or deny the shareholders an opportunity to decide on its merits; and
- all parties concerned with transactions subject to the Code must cooperate with the SFC.

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## KEY CONCEPTS

**Control** – a holding, or aggregate holdings, of 30% or more of the voting rights of a company, irrespective of whether that holding or holdings gives de facto control.

**Voting rights** – means all the voting rights currently exercisable at a general meeting of a company whether or not attributable to the share capital of the company.

**Rights over shares** – includes any rights acquired by a person under an agreement to purchase, or an option to acquire, shares, options, warrants, convertible securities or voting rights (or control of any of them), or any irrevocable commitment to accept an offer.

**Privatisation** – means an offer (other than a partial offer), however effected, for a company by a shareholder which has control of that company, or by any person or persons acting in concert with such shareholder.

**Cash purchases** – Cash purchases include contracts or arrangements where the consideration consists of a debt instrument capable of being paid off in less than three years.

**Acting in concert** – Persons acting in concert comprise persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate to obtain or consolidate “control” of a company through the acquisition by any of them of voting rights of the company. The Code further provides 9 classes of “deemed” concert parties.

**Associate** – The term associate will cover all persons acting in concert with an offeror. It is also intended to apply to a wider range of persons (who may not be acting in concert) and will cover all persons who directly or indirectly own or deal in the relevant securities of an offeror or the offeree company in an offer and who have (in addition to their normal interests as shareholders) an interest or potential interest, whether commercial, financial or personal, in the outcome of the offer.

**Associated company** – A company shall be deemed to be an associated company of another company if one of them owns or controls 20% or more of the voting rights of the other or if both are associated companies of the same company.

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## PRE-OFFER STAGE

Parties shall be aware that there are continuing obligations that must be observed even before an approach is made to indicate the possibility of a takeover offer. For instance, obligations arise regarding secrecy, announcement and share dealings.

### Secrecy

Absolute secrecy must be maintained until an announcement is made. Financial and legal advisers should warn their clients of the importance of secrecy. Information may only be passed to another person if it is necessary to do so and if the other person indicated the needs of secrecy.

### Due diligence

It is important to remember the obligations of the Code that information relating to the target given by the offeree to an offeror should be furnished equally and promptly upon request to any other offeror or bona fide potential offeror, who should specify the questions to which it requires answers. If another offeror (maybe less welcome) seeks to obtain information, the offeree will not be permitted to withhold information from the second offeror merely because it prefers the first.

The Code requires that if the approach to the offeree is made not by the potential offeror but, by a broker, for instance, then the identity of the potential offeror or its ultimate controlling shareholder must be disclosed to the board of the offeree.

### Insider dealing

Under the Code, generally no dealings of any kind in target securities may be transacted by any person, not being the bidder, who has confidential price sensitive information concerning a contemplated offer between the time when there is reason to suppose that an approach is contemplated and the announcement of the approach or of the termination of the discussion. In addition, no dealings may take place in bidder securities except where the offer is not price sensitive in relation to those securities.

A potential bidder may consider taking an initial stake in the target to improve the chances of success. In principle, there are no restrictions on stake building prior to an offer being announced, although dealing in shares will be subject to the Code and the SFO. In addition, if a potential bidder is a listed company on the Hong Kong Stock Exchange, it may require disclosure or even shareholder's approval under the Listing Rules.

### Letter of intent

It is normal to sign a letter of intent between the offeror and offeree in a friendly takeover. Unless announced publicly, such letters of intent relating to an offer should be disclosed to the Executive. If such letters of intent contain the substantive terms of an agreement, then it is likely that an announcement will be required.

It is also not uncommon for an offeror to seek irrevocable undertakings to accept the offer from substantial shareholders of the target, especially because most Hong Kong companies tend to be controlled by a small number of shareholders. Generally, the SFC must be consulted where it is intended to seek irrevocable undertakings. The announcement of an intention to make a firm offer must specify in what circumstances an irrevocable undertaking will cease to be binding. Irrevocable undertaking must normally be available for public inspection following the issue of the offer documents.

## Break fee

Break fees are becoming more common. If the target agrees to pay a break fee if the bid is not successful, its board and financial adviser must confirm to the SFC that they believe this is in the best interests of the company. It should be de minimis (normally no more than 1% of the offer value).

## Disclosure obligations

The SFO requires the public disclosure of substantial interests in the relevant share capital of listed companies and discloseable dealings by directors and chief executives in shares or debentures of listed and associated companies. All the PRC companies whose H shares are listed in Hong Kong have more than one class of voting shares. Therefore, the disclosure obligation may arise in relation to each class of shares. A person is regarded to be interested in shares if he enters into a contract for their purchase, or is entitled to exercise any right conferred by the holding of the shares, or is entitled to control the exercise of any such right.

The threshold at which disclosure must be made is 5% of the relevant class of shares. Thereafter, further disclosure must be made every time the shareholder's interest passes through a whole percentage point, or if the interest falls below 5%. The disclosure must be made within three business days after the day on which the duty to notify the relevant interest arose.

Under the Code, dealing during an offer period by parties involved in a takeover for themselves or for discretionary clients must be publicly disclosed by 10:00 am on the business day following the transaction. Dealings by person connected with a takeover on behalf of non-discretionary clients must be disclosed privately to the SFC.

## Requirement for a cash offer

Where an offeror, or any person acting in concert, has acquired for cash shares carrying 10% or more of voting rights in the offeree company during the offer period and within six months prior to its commencement, or acquires shares for cash during the offer period, the offer must be made in cash, or be accompanied by a cash alternative, at not less than the highest price paid in respect of such shares during that period. If target shares are acquired in exchange for securities in the 12 months prior to the commencement of the offer period, this may be treated as an acquisition for cash and require a cash offer.

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# ANNOUNCING AND MAKING THE OFFER

## Responsibility for making announcement

The Code sets out requirements regarding circumstances in which various parties must make an announcement. These rules are generally the same for all the offers, regardless of whether they are hostile or agreed, and could be summarised as follows.

### By offeror or potential offeror

Before the approach is made to the offeree board, the responsibility for making an announcement normally rests with the offeror or potential offeror. The Code provides a number of circumstances when a offeror must make an appropriate announcement, including:

- if the target is subject to rumour or speculation about a possible offer and there are reasonable grounds for concluding that it is the potential offeror's action which have led to the situation;

- if there is undue movement in the target's share price or a significant increase in the volume of share turnover and there are reasonable grounds for concluding that it is the potential offeror's action which have led to the situation;
- when negotiations are about to be extended to include more than a very restricted number of people (outside those who need to know in the companies concerned or their immediate advisers);
- where its acquisition of shares triggers an obligation to make a mandatory offer;

Even after an approach is made to the offeree board, the actions of the offeror may place him under the obligation to make an announcement, so he should at all times monitor the price and trading volume of the offeree's shares for undue movement.

### **By offeree**

The primary responsibility for making an announcement normally transfers to the offeree's board after an approach has been made to it. The board of offerees must make an announcement as follows:

- when a firm intention to make an offer is notified to it from a serious source, irrespective of the board's attitude to the approach;
- following an approach, whether or not there is a firm intention to make an offer, the target is the subject of rumour or speculation about a possible offer or there is undue movement in its share price or in the volume of its share turnover;
- when negotiations or discussions between the offeror and the offeree are about to be extended to include more than a very restricted number of people;
- when the board is aware that there are negotiations or discussions between a potential offeror and holders of shares carrying 30% or more of the voting rights of the company, or the board is seeking potential offerors and either rumour or speculation about a possible offer arises or there is undue movement in the share price or turnover volume, or the number of potential purchasers or offerors approached is about to be increased to include more than a very restricted number of people.

### **By potential vendor**

A potential vendor who holds shares carrying 30% or more of the voting rights of a company and is in discussions with a potential offeror must make an announcement when:

- the company is subject to rumour or speculation of a possible offer; or
- there is undue movement in its share price or in the volume of share turnover; and
- there are reasonable grounds for concluding that it is the potential vendor's actions which have led to the situation.

Until a firm intention to make an offer has been notified, a brief holding announcement by a potential offeror or the offeree that talks are taking place or an offer may be in contemplation will suffice. The position must be updated monthly.

## **Announcement of a firm intention to make an offer**

The Code sets out information that must be included in the announcement of a firm intention to make an offer. All the documents associated with such an announcement, must be prepared to prospectus standard and use unambiguous language. It must contain the following information, as a minimum:

- the term of the offer;
- the identity of the offeror and where it is a company, its ultimate controlling shareholder and the ultimate parent company;
- details of the voting rights and rights over shares in the offeree company which the offeror owns or controls, details of any irrevocable commitment received by the offeror and convertible securities, warrants and options held by offeror;
- details of any outstanding derivatives relating to offeree's securities held by the offeror or any person acting in concert with it;
- all conditions to which the offer is subject;
- details of any arrangement in relation to shares of the offeror or the offeree which might be material to the offer;
- details of any agreements or arrangements to which the offeror is a party that relate to the circumstances in which it may or may not invoke or seek to invoke a pre-condition or a condition to its offer and the consequences of its doing so, including details of any break fees payable as a result.

The announcement shall also include confirmation by the offeror's financial adviser or by another appropriate third party that sufficient resources are available to the offeror to satisfy full acceptance of the offer.

All the announcements, circulars and advertisements to shareholders relating to takeovers must be cleared by the Executive prior to release. Depending on the situation of the offer, the SFC may require additional information (typically about the background to the offer and the parties) beyond the requirement specified in the Code.

## **Restrictions on dealings during the offer**

During an offer period, the offeror and persons acting in concert with the offeror must not sell any securities in the offeree company except with the prior consent of the Executive and following 24 hours public notice that such sales might be made.

Except with the consent of the Executive, where the consideration under an offer includes securities of the offeror or a person acting in concert with it, neither the offeror nor any person acting in concert with it may deal in any such securities or conduct any on-market repurchase of such securities during the offer period.

## **No frustrating action**

Under the Code, once a bona fide offer has been communicated to the offeree's board, or the board has reason to believe that a bona fide offer may be imminent, no action may be taken by the board in relation to the affairs of the company which could effectively frustrate or deny the merits of the offer, without the approval of the shareholders in general meeting.

The Listing Rules require that each company should have a minimum number of directors independent of the principal shareholder and certain actions may only be taken if approved by an appropriate majority of independent shareholders. These provisions are intended to give independent shareholders some limited protection from controlling shareholders, however, may further limit the actions that can be taken by a board in a takeover offer.

## THE OFFER TIMETABLE

TIMING	ACTION
Day -21/-35	<b>Making the announcement of the terms of the offer</b>
Day 0	<b>Posting offer document</b>  Within 21 days from the date making the announcement or within 35 days in the case of a securities exchange offer.
Day 21/28	<b>First closing date</b>  The offer must be open for acceptance for at least 21 days following the date of posting if the offer and response documents are dispatched on the same day, or 28 days if the response documents are dispatched after the date of dispatch of the offer documents.
Day 39	<b>Last announcement by target</b>  Offeree should not announce any new material information (including trading results, profit or dividend forecasts, asset valuations or proposals for dividend payments or for any material acquisition or disposal or major transactions) after the 39th day. If announcement of such matters is made after the 39th day, the "Day-46" and "Day-60" period referred to below will normally be extended by the Executive.
Day 42/49	<b>Withdrawal of acceptances</b>  An acceptor shall be entitled to withdraw his acceptance after 21 days from the first closing date of the offer, if the offer has not by then become unconditional as to acceptances. This entitlement shall be exercisable until such time as the offer becomes or is declared unconditional as to acceptances. However, on the 60th day the final time for the withdrawal must not be later than 4.00 p.m.
Day 46	<b>Last day for revision</b>  A revised offer must be kept open for at least 14 days following the date on which the revised offer document is posted (i.e. if the last unconditional day is Day 60, the last day for revision will be the 46th day from the original posting date of the offer document).
Day 60	<b>Unconditional as to acceptances</b>  Unless the offer is unconditional as to acceptances, the offer may not be kept open after the expiry of 60 days from the date on which

	it is posted
<b>Day 81</b>	<b>Wholly unconditional</b>  All conditions of the offer must be fulfilled, or the offer must lapse.

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## MANDATORY AND VOLUNTARY OFFERS

### Mandatory offer obligation

The requirement of a mandatory offer is based on the general principle that if the control of a company changes or is acquired or consolidated, a general offer to all other shareholders is normally required. The mandatory offer must be made to each class of equity share capital (whether carrying voting rights or not) and any class of voting non-equity share capital of the company. Offers for different classes of equity share capital must be comparable and the Executive must be consulted in advance.

### WHEN DOES THE OBLIGATION ARISE?

#### The Trigger

An obligation to make a mandatory offer arises when:

- any person or group of persons acting in concert, whether by a series of transactions over a period of time or not, acquires 30% or more of the voting rights in a company to which the Code applies.

#### The Creeper

An obligation to make a mandatory offer also arises when:

- any person or group of persons acting in concert holding not less than 30%, but not more than 50%, of the voting rights of the company acquires additional voting rights which has the effect of increasing its holding by more than 2% from its lowest percentage holding in the previous 12 months.

A mandatory offer may also be required where a person or group of persons acting in concert acquires statutory control of a company and thereby acquires, indirectly, 30% or more of the voting rights in a second company to which the Code applies.

### Dispensation from a mandatory offer obligation

There are certain circumstances where the Executive may consider granting a waiver for a mandatory offer obligation, including:

#### Vote of independent shareholders on the issue of new securities (“Whitewash”)

Where the issue of new securities as consideration for an acquisition, or a cash subscription, or the taking of a scrip dividend, or the issue of shares to underwriters, the Executive will normally waive the obligation to make a mandatory offer if the shareholders who are not involved in, or interested in, the transaction voted at a shareholders' meeting to approve the transaction.

## **Enforcement of security for a loan, receivers etc.**

Where a shareholding in a company is charged to a bank or lending institution on an arm's length basis and in the ordinary course of its business as security for a loan and, as a result of enforcement, the lender would otherwise incur an obligation to make a general offer under the Code, the Executive will normally waive the requirement, provided that the security was not given at a time when the lender had reason to believe that enforcement was likely.

## **Rescue operations**

Where a company is in such a serious financial position that the only way to save it is by an urgent rescue operation which involves the issue of share without approval by the independent shareholders, or by acquisition of existing securities by the rescuer, the Executive will normally grant a waiver for the obligation.

## **Inadvertent mistake**

If, due to an inadvertent mistake, a person incurs an obligation to make a mandatory offer, the Executive will not normally require an offer if sufficient voting rights are disposed of within a limited period to persons unconnected with him.

## **Balancing block: where 50% will not accept**

Where a group of persons acting in concert already holds 30% or more of the voting rights and subsequently a person, or group of persons within such group, acquires 30% or more of the voting rights, the waiver may be granted if:

- a single person holding 50% or more of the voting rights states that he/she will not accept the offer that the purchaser would otherwise be obliged to make; or
- the holders of not less than 50% of the voting rights provide the Executive with a written confirmation that they will not accept the offer.

## **Placing and top-up transaction**

Where a shareholder holding not more than 50% of the voting rights in a company places part of his/her holdings to one or more independent persons and then, as soon as practicable, subscribes for new shares up to the number of shares placed at a price substantially equivalent to the placing price after expenses, a waiver will normally be granted. The Executive will normally require the financial adviser, placement agent or acquirer of the voting rights to verify and/or confirm that the purchaser is independent of, and does not act in concert with, the vendor.

## **CONSIDERATION**

### **Mandatory offers**

A mandatory offer must be in cash or be accompanied by a cash alternative at not less than the highest price paid for by the offeror (or any person acting in concert with it) for shares carrying voting rights during the offer period and within the six months prior to its commencement.

### **Voluntary offers**

The consideration for a voluntary offer can be in cash or securities, or a combination of both. However, if the offeror or any person acting in concert with it:

- has acquired for cash shares carrying 10% or more of the voting rights of the company during the offer period and the six months prior to its commencement; or
- acquires any target shares during the offer period for cash

the offer must be in cash or be accompanied by a cash alternative at not less than the highest price paid for shares of the same class during the relevant period by the offeror (or any person acting in concert with it). The Executive may require that a cash alternative is provided in other circumstances to give effect to the principle that all shareholders are to be treated even-handedly and all shareholders of the same class are to be treated similarly.

## **CONDITIONS**

### **Acceptance condition**

Except with the consent of the Executive, all offers (other than partial offers) shall be conditional upon the offeror having received acceptances in respect of shares which, when aggregated with the shares already acquired or agreed to be acquired before or during the offer, will result in the offeror and persons acting in concert with him/her holding more than 50% of the voting rights of the company.

### **Conditions of a mandatory offer**

A mandatory offer shall not be made subject to any other conditions other than the acceptance condition above-mentioned, whether as to minimum or maximum levels of acceptances required to be received or otherwise.

### **Conditions of a voluntary offer**

A voluntary offer may be made conditional on an acceptance level of shares carrying a higher percentage of voting rights than the above-mentioned acceptance condition.

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## **POST-OFFER STAGE**

### **Purchase the shares of outstanding minority shareholders**

An offeror may compulsorily acquire the shares held by non-accepting shareholders where it has:

- within four months of the date of the offer,
- acquired by virtue of the offer (or, in the case of shares listed on the Stoke Exchange, by virtue of the offer or otherwise),
- 90% or more in value of the shares to which the offer relates (being all the shares of the target other than those held by the offeror or member of its group).

The terms of the offer must be the same in relation to all shares to which the offer relates.

Where the offeror has acquired shares representing 90% in value of all shares of the relevant class, minority shareholders may require the offeror to acquire the balance. However, this procedure is only relevant where the company law of the place of incorporation of the company provide for such a compulsory acquisition procedure.

## **Scheme of arrangement**

For companies incorporated in Hong Kong, a scheme of arrangement under the Companies Ordinance offers a more effective way of buying in minority shareholders than a straightforward voluntary offer. The court may, on the application in a summary way of the company, order a meeting of the members of the company or class of members to be summoned in such manner as the court directs. Such a scheme must be approved by a majority of the shareholders who are present and vote at a general meeting and who represent 75% in value of the shares voted.

In addition, the Code requires that except with the consent of the Executive, where any person seeks to use a scheme of arrangement or capital reorganisation to acquire or privatise a company, the scheme or capital reorganisation may only be implemented if:

- the scheme is approved by 75% of the votes attached to disinterested shares who voted at a meeting of the shareholders; and
- the number of votes cast against the resolution is not more than 10% of the votes attaching to all disinterested shares.

When the scheme is duly approved, it will bind all members of the relevant class of shares and the company. For companies incorporated outside Hong Kong, there are similar procedures provided for in the company legislation of some of the jurisdictions in which they are incorporated.

## **De-list a company**

Under the Listing rules, a company may not voluntarily withdraw its listing on the Hong Kong Stock Exchange without the permission of the Exchange. Permission should be given if:

- the company has obtained the prior approval of its shareholders and holders of any other class of listed securities (if applicable);
- the directors, chief executive and any shareholder holding 30% or more of the listed shares and their associates do not vote; and
- the resolution is passed by a majority, in number, of shareholders who vote and represent three-quarters in value of the shares voted.

Neither the offeror nor any concert party may vote on the resolution. The Code also additionally requires that the number of votes cast against the resolution to de-list is not more than 10% of the votes attaching to all shares, excluding those held by the offeror and its concert parties. The offeror should be entitled to exercise, and does exercise, its right of compulsory acquisitions.

## **Restrictions on further offers**

When a bid fails, within 12 months from the date on which of the offer is withdrawn or lapses, except with the consent of the Executive, neither the offeror nor any of its concert acted (or acting) parties may:

- announce an offer or possible offer for the target;
- acquire any voting rights in the target if the bidder or persons acting in concert with it would thereby become obliged to make a mandatory offer.

These restrictions also apply for a period of 6 months where a person does not announce a firm intention within a reasonable time, after having made an announcement which raises or confirms the possibility that an offer might be made.

Where a person announces that it does not intend to make an offer, the restrictions will also normally apply for 6 months unless, either:

- there is a material change of circumstances, or
- there has occurred an event which the person specified in its announcement as an event which would enable it to be set aside.

Furthermore, except with the consent of the Executive, an offeror or any person acting in concert with it holding more than 50% of the voting rights in the offeree company may not, within 6 months after the end of the offer period of any previous offer made by it, which became or was declared wholly unconditional, make a second offer to, or acquire any share from, any shareholders of the offeree company at a higher price than that made available under the previous offer.

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## ADMINISTRATION OF THE CODE

There are three parties sharing the administration of the Code: the Executive, the Takeovers and Mergers Panel ("Panel") and the Takeover Appeals Committee (Appeal Committee).

### **The Executive**

- Is responsible for handling the day-to-day administration of the Code;
- regulating takeovers and mergers as part of their general regulatory duties;
- undertaking investigations, monitors dealings related to takeovers, and gives rulings on all matters before and during takeovers.

### **The Panel**

- Hears disciplinary matters referred by the Executive;
- reviews rulings by the Executive at the request of any dissatisfied parties;
- considers novel, important or difficult issues referred to it by the Executive.

Composition includes:

A Chairman and one or more Deputy Chairman not associated with the SFC and up to 26 members drawn from the financial and investment community, at least one of them should be a non-executive director of the SFC.

### **The Appeals Committee**

Review disciplinary decisions of the Panel for the sole reason of determining whether the sanction imposed by the Panel is unfair or excessive based upon the Panel's findings of fact.

Composition includes:

A Chairman and a Deputy Chairman, who are the incumbent Chairman and Deputy Chairman of the Securities and Futures Appeal Panel ("SFAP"). The other members of the Appeal Committee are drawn from members of the Panel or SFAP who had legal training and experience.