
Singapore

Takeover Guide

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INTRODUCTION

The Singapore legal system is based on the common law system, where case precedents and statutory provisions exist side by side. Singapore obtained its independence in 1965 and the Companies Act was passed in 1967. The Companies Act of 1967 was based on the Malaysian model, which in turn was based on the Australian model at that time, which was itself derived from the then Companies Act of the United Kingdom. Over the years, the Companies Act, Chapter 50 of Singapore (the “Companies Act”), has evolved uniquely from its predecessors. The take-over and corporate fund-raising provisions of the Companies Act have been transposed to the Securities and Futures Act, Chapter 289 of Singapore (the “SFA”), which came into effect fully on 1 October 2002.

The Companies Act continues to contain general corporate legislation including provisions relating to the incorporation, management, administration and winding-up of companies. Two basic types of companies are provided for under the Companies Act, namely, the private company and the public company. A company is a private company where its memorandum or articles of association contains a restriction on the right to transfer shares and a limitation on the number of members to not more than 50. A public company is a company that is not a private company. Public companies include companies limited by guarantee and companies limited by shares which are incorporated as public companies and which may or may not be listed on a stock exchange. Many public companies incorporated in Singapore are listed on the Singapore Exchange Securities Trading Limited (the “SGX”), and all companies listed on the SGX are necessarily public companies. The SGX is currently the only securities exchange in Singapore.

The focus of the discussion in this Guide will revolve around the requirements relating to a take-over offer of a listed Singapore public company. These requirements are currently set out in the SFA, the Singapore Code on Take-overs and Mergers (the “Take-over Code”), the Companies Act and the SGX Listing Manual (the “Listing Manual”).

This Guide should not be relied on in place of detailed advice about any specific transaction.

LEGAL AND REGULATORY FRAMEWORK

The Singapore legal and regulatory framework allows a number of ways to effect corporate acquisitions and mergers, and the choice as to which route to take largely depends on the kind of company involved. Where a public listed company is being acquired or taken over, such activity is regulated. Public take-over offers generally involve the acquisition of shares in a listed public company by an acquiring entity so that the target company becomes a subsidiary of the acquiring entity. In the acquisition of shares in private companies, these transactions are generally unregulated. Apart from the acquisition of shares, an entity intent on acquiring the business of another may effect this by the acquisition of assets and liabilities rather than shares.

Securities and Futures Act and Companies Act

Part VIII of the SFA contains legislative provisions relating to take-over offers. Section 138 of the SFA provides for the establishment of an advisory body known as the Securities Industry Council (the “SIC”). The SIC is the regulator which oversees the Take-over Code and is part of , the Monetary Authority of Singapore (the “MAS”). . Section 140 lists the offences relating to take-over offers. It is an offence for a person to give notice or publicly announce that he intends to make a take-over offer if he has no intention to make one. It is also an offence to make a take-over offer if a person has no reasonable or probable grounds for believing that he will be able to perform his obligations pursuant to the offer being accepted or approved.

The Companies Act is also relevant in the context of corporate acquisitions and mergers. Section 210 of the Companies Act provides for schemes of arrangement, which is one of the methods used to privatise a Singapore-incorporated listed company. , Singapore-incorporated companies can also use the amalgamation process in Section 215A to 215J of the Companies Act to facilitate the combination of companies. Section 215 of the Companies Act governs the compulsory acquisition of the shares of minority shareholders once an offerer has acquired 90 per cent of the target's shares through a take-over offer (excluding the shares held by the offerer). Shares held by the offerer include shares held by a nominee on behalf of the offerer, as well as shares held by either a related corporation of the offerer or a nominee of that related corporation. Under the Companies Act, a related corporation is a subsidiary, holding company or a fellow subsidiary.

The Companies Act also contains provisions relating to financial assistance in Sections 76 and 76A. Currently, the financial assistance provisions restrict a company incorporated in Singapore from providing financial assistance, whether directly or indirectly, to any person in the acquisition or proposed acquisition of shares in that company or the holding company of that company. The provisions relating to financial assistance are widely drafted. For instance, if a party seeking to acquire shares in a target company procures the target company to charge its assets to refinance a loan taken by the offerer to acquire the target company, this may constitute financial assistance.

Financial assistance is, however, a restricted but not a prohibited activity under the Companies Act. It is possible to "whitewash" financial assistance, where the company obtains its shareholders' approval by a special resolution and complies with the procedures set out in Sections 76(10) to 76(14) of the Companies Act, which include the filing of certain prescribed forms with the Registrar of Companies and Businesses (the "Registrar"), publishing a notice of intention to give financial assistance in a daily newspaper and permitting objections to be made by shareholders, debenture-holders, creditors and the Registrar. A special resolution requires the approval of a majority of not less than 75 per cent of shareholders present and voting at a general meeting for which not less than 21 days' prior notice has been given. Where the company is a subsidiary of a listed corporation, or a subsidiary whose ultimate holding company, is incorporated in Singapore, the listed corporation or ultimate holding company is also required to obtain its shareholders' approval for giving the financial assistance. Financial assistance may also be given in other circumstances including where the amount of financial assistance is not more than ten per cent of the company's paid-up capital and reserves or where the resolution to provide the financial assistance receives the unanimous approval of all shareholders of the company.

Take-over Code and the SIC

The Take-over Code applies to the acquisition of voting control of public companies. It applies to corporations (including corporations not incorporated under Singapore law) with a primary listing of their equity securities in Singapore and business trusts with a primary listing of their units in Singapore. While the Take-over Code was drafted with listed public companies and listed registered business trusts in mind, unlisted public companies and unlisted registered business trusts with more than 50 shareholders or unit holders, as the case may be, and net tangible assets of S\$5 million or more must also observe, wherever possible and appropriate, the letter and spirit of the Take-over Code as set out in its General Principles and Rules. The Take-over Code does not apply to take-overs or mergers of other unlisted public companies and unlisted business trusts, or private companies. With respect to foreign-incorporated companies and foreign-registered business trusts, the Take-over Code applies only to those with a primary listing in Singapore.

The Take-over Code applies to all offerers, whether they are natural persons or not, be they resident in Singapore or not and whether citizens of Singapore or not, and whether they are corporations or bodies unincorporated, be they incorporated or carrying on

business in Singapore or not. The Take-over Code also extends to acts done or omitted to be done in and outside Singapore.

The Take-over Code is administered and enforced by the SIC. The SIC is provided with discretion to waive the application of the Take-over Code in relation to Singapore-incorporated companies or Singapore-registered business trusts with a primary listing overseas, and unlisted public companies and unlisted registered business trusts with more than 50 shareholders or unitholders, as the case may be, and more than S\$5 million of net tangible assets. Such discretion allows the SIC to waive the Take-over Code where the costs of compliance outweigh the benefits.

The SIC is made up of representatives from the government, the MAS and the private sector. The day-to-day business of the SIC is conducted by a professionally-staffed full time Secretariat. The MAS is a statutory board formed under the Monetary Authority of Singapore Act, Chapter 186 of Singapore, and is the de facto central bank of Singapore, as well as the integrated regulator of the banking, insurance, financial, securities and futures industries.

The Take-over Code contains General Principles, Rules and Notes. Nonetheless, the Take-over Code notes that it is impracticable to devise rules in sufficient detail to cover all circumstances that can arise in take-over and merger transactions. Therefore, both the letter and spirit of the Take-over Code must be observed, especially in circumstances not explicitly covered by any Rules. The SIC may, pursuant to Section 139 of the SFA, also issue rulings on the interpretation of the General Principles and the Rules in the Take-over Code and lay down the practice to be followed by the parties in a take-over offer or a matter connected therewith. In the course of a take-over, it is not unusual to require rulings from the SIC. The SFA provides that such rulings or practice issued by the SIC shall be final and not be capable of being challenged in any court.

The SIC is available at all times for confidential consultation on points of interpretation of the Take-over Code. When there is any doubt as to whether a proposed course of conduct in a take-over offer accords with the General Principles or Rules of the Take-over Code, it is advisable for the parties or their advisers to consult the SIC in advance, as such confidential consultation minimises the risk of breaches of the Take-over Code.

The parties to a take-over are primarily responsible for ensuring observance of the provisions of the Take-over Code. If there appears to be a breach of the Take-over Code, the SIC may summon the alleged offenders to appear before the SIC for a hearing, where every alleged offender will have the opportunity to answer allegations and to call witnesses. The SFA provides the SIC with powers to investigate any acts of misconduct in relation to or connected with a transaction involving a take-over or merger transaction, where it has reason to believe that any party or any financial adviser is in breach of the Take-over Code. In this respect, the SIC is empowered to make enquiries, summon persons to give evidence on oath or affirmation, or to produce any document or material necessary for the purpose of the enquiry.

Although the Take-over Code does not have the force of law and does not give rise to criminal proceedings, its breach may result in the imposition of sanctions by the SIC. Sanctions which the SIC may impose include private reprimands, public censure and, where the breach is flagrant, further action designed to deprive the offender temporarily or permanently of its ability to enjoy the facilities of the securities market.

If the SIC finds evidence to show that a criminal offence has been committed under the Companies Act, the SFA or any relevant criminal law, it will recommend to the Attorney-General, the prosecutorial authority in Singapore, that the alleged offender be prosecuted. It is noted that the SFA sets out the criminal offence of insider trading and prohibits a person with inside information from dealing in the shares of a target company.

Listing Manual and the SGX

Where either the acquiring company or the target company is a company listed on the SGX, the Listing Manual applies. This is so by virtue of the listing contract between the listed company and the SGX. In summary, the Listing Manual contains rules regulating the general affairs of listed companies and therefore its provisions have to be taken into account if either the acquiring company or the target company is listed on the SGX.

The listing rules set out in the Listing Manual are not statutory in nature; they are made by the SGX, subject to the approval of the MAS as required under the SFA. The SFA also empowers the SGX to apply to the court for a court order to enforce compliance with the listing rules, though this power has been rarely, if ever, used. In practice, ready observance of the Listing Manual is advised as failure to comply therewith may lead to a reprimand by the SGX, and at worst, a de-listing. Furthermore, the SFA provides that a company listed on the SGX must not intentionally, recklessly or negligently fail to notify the SGX of information on specified events or matters, as they occur or arise, which are required to be disclosed under the listing rules for the purpose of making information available to the market.

The Listing Manual sets out the continuing listing requirements and corporate disclosure policy which a listed company has to comply with. A listed company is required to keep the SGX, its shareholders and other holders of its listed securities informed of all material information relating to it, and this includes, of course, any information in relation to a take-over, merger or acquisition. A listed company intending to make an acquisition or a listed company who is the target of an offer will have to make the necessary disclosures. The information to be disclosed has to be factual, clear and succinct, and contain sufficient quantitative information to allow investors to evaluate its relative importance to the activities of the listed company. This includes information pertaining to the particulars of the transaction, its rationale, any consideration payable, any analysis of financial impact, the conditions for the transaction and the disclosure of any conflicts of interest.

The Listing Manual is also relevant where a listed offerer offers new shares as consideration in its take-over offer. Where the target company is a listed company, the Listing Manual contains provisions relating to reverse take-overs (see the discussion on reverse take-overs). The approval of the SGX is required in a reverse take-over for the transaction itself as well as for the listing of new shares in the target company.

Competition Act

The Competition Act, Chapter 50B of Singapore (the "Competition Act"), prohibits mergers that have resulted, or may be expected to result, in a substantial lessening of competition within any market of goods or services in Singapore.

From 1 July 2007, a person who is unsure whether a merger is prohibited by the Competition Act may apply to the Competition Commission of Singapore (the "CCS") for a decision on whether the merger if carried into effect will infringe the provisions of the Competition Act.

Statutory Shareholding Restrictions in Specific Industries

Other statutes relating to particular industries also govern take-over activity in Singapore insofar as they limit or require prior regulatory approval for share ownership in companies engaged in those industries. Those industries are generally industries perceived to be critical to national interests, for instance, banking, finance, insurance and media.

Examples of such statutes include the Banking Act, Chapter 19 of Singapore; the Finance Companies Act, Chapter 108 of Singapore; the Insurance Act, Chapter 142 of Singapore; the Newspaper and Printing Presses Act, Chapter 206 of Singapore; and the Telecommunications Act, Chapter 323 of Singapore.

METHODS OF TAKE-OVER

A take-over or acquisition of shares may be effected in various ways, taking into account financing preferences, tax considerations and market conditions. The most efficient method for any particular transaction depends on the circumstances and the objectives of the transaction parties. The more common methods, which will be discussed in further detail, are cash purchases and/or share swaps, reverse take-overs and schemes of arrangement. The amalgamation process, as set out in Sections 215A to 215J of the Companies Act, may also be used.

The end result of these various take-over methods is that the target company becomes a subsidiary of the acquiring company. This enables the acquiring company to consolidate the results of the target company with its own. Apart from the above methods, there are other ways to achieve this result, for instance, incorporating a new holding company to acquire both the acquirer and the target company or amalgamating the target company into the acquirer so that the target company ceases to exist as a legal entity.

CASH PURCHASE AND/OR SHARE SWAP

An acquiring entity may offer cash, shares or other securities or a mixture of any of these as consideration for the take-over bid. The offer may be in the form of cash from the acquirer's own resources; from debt financing; or from an underwritten issue of the acquirer's own shares. In a cash purchase, the acquiring entity makes an offer and acquires the shares of the target company for cash only. In a share swap arrangement, the acquiring entity acquires shares in the target company from the shareholders of the target company and in return, provides shares in itself, the acquirer.

The Take-over Code provides that a mandatory offer has to be in the form of a cash offer or be accompanied by a cash alternative. In the case of a voluntary offer, a cash offer or an offer accompanied by a cash alternative has to be made in certain circumstances (see the discussion of mandatory offers and voluntary offers). Apart from any mandatory cash and securities components stipulated in the Take-over Code, the choice of consideration for the take-over offer will depend, amongst other things, upon the acquirer's own financial position and, if it is proposing an underwritten share issue to effect a share swap, the market's appetite for its shares. The shareholders of a target company may be given a choice of consideration, for example, cash with a partial share alternative. They may also be offered the facility to be able to mix and match different forms of consideration between themselves by making certain elections to the acquirer.

REVERSE TAKE-OVERS

In a reverse take-over transaction, the acquirer transfers to the target company certain assets and business in exchange for new shares in the target company. The acquirer then may be required to make, or may decide to make, a take-over offer for all the remaining shares in the target company that it does not own. Where the target company is a listed company, the effect of a reverse take-over is that the acquirer gains control of a listed company, and such transactions are also known as "back door" listings. These transactions are subject to additional approvals and requirements by the SGX.

The Listing Manual contains specific provisions relating to "very substantial acquisitions or reverse-takeovers". Whether a transaction is considered a very substantial acquisition or a reverse take-over depends on various calculation modes set out in the Listing Manual or whether the transaction would result in a change in control of the listed company. In calculating whether a transaction is a very substantial acquisition for the purposes of the Listing Manual, the following figures are taken into account:

- the operating profit before income tax attributable to the assets acquired, compared with the operating profit before income tax of the target company and its subsidiaries;
- the aggregate value of the consideration given or received, compared with the market capitalisation of the target company and its subsidiaries based on the total number of issued shares excluding treasury shares; or
- the number of equity securities issued by the target company and its subsidiaries, compared with the number of equity securities previously in issue.

If any one of the relative figures equals 100 per cent or more, the transaction will be regarded as a very substantial acquisition or reverse take-over and the Listing Manual requires the transaction to be made conditional upon the approval of shareholders. Apart from the transaction itself, the shareholders will also have to approve the issue of new shares in accordance with the Companies Act.

Furthermore, the transaction as well as the issue and listing of the new shares will have to be approved by the SGX. In this respect, the SGX requires that the enlarged group consisting of the offerer and offeree companies will have to re-comply with the SGX listing requirements. “Back door” listings are viewed by the SGX in the same regard as initial public offerings.

SCHEMES AND AMALGAMATIONS

Scheme of Arrangement

Instead of pursuing a take-over under the Take-over Code, an acquisition of a public company may also be effected through a scheme of arrangement provided for in Section 210 of the Companies Act. In a scheme of arrangement, the target company cancels its existing shares and issues new shares in the target company to the acquirer, in consideration of the acquirer paying cash or issuing new shares in the acquiring company to the shareholders of the target company, or a combination of both cash and shares. Alternatively, outstanding shares in the target company may be transferred from the shareholders of the target company to the acquirer. As the Section 210 scheme of arrangement is an arrangement between a company and its members, only the target company may initiate a scheme of arrangement. It is, therefore, not available as an option in a hostile acquisition. A scheme of arrangement will typically be used only in a situation where the acquirer wishes to acquire all the shares of a target company.

All schemes of arrangement are subject to compliance with the Take-over Code. However, the SIC may, subject to conditions, exempt a scheme from selected provisions of the Take-over Code. Exemptible provisions include those relating to the offer timetable and terms of the offer. The SIC will normally grant such exemptions if the following four conditions are met:

- the common substantial shareholders of the scheme companies (those holding five per cent or more in both the companies to be merged) are to abstain from voting on the scheme;
- persons and their concert parties who as a result of the scheme would acquire 30 per cent or more in a scheme company or a new entity that holds the scheme company or companies, or persons who as a result of the scheme (if they already hold 30 per cent to 50 per cent before the scheme) would increase their voting rights by more than one per cent in any period of six months, are to abstain from voting on the scheme;

- the directors of a scheme company who are also directors of the other scheme company or who are acting in concert with those persons mentioned in the earlier conditions are to abstain from making a recommendation on the scheme to shareholders of the scheme companies; and
- the scheme company which is in effect the offeree company has to appoint an independent financial adviser to advise its shareholders on the scheme of arrangement. Where the scheme of arrangement involves a reverse take-over or a “merger of equals”, each of the scheme companies must appoint an independent financial adviser to advise their respective shareholders. In cases of doubt, the SIC should be consulted.

Various other approvals are also required for a scheme of arrangement to take effect. In accordance with Section 210(2) of the Companies Act, a scheme of arrangement requires the approval of a majority in number of members of the target company present and voting, representing at least 75 per cent in value of the shares voted at a scheme meeting. It is noted that the SGX may impose an additional requirement that not more than ten per cent in value of the shares should have voted against the proposed scheme. In the voting process, the acquirer and its related parties as well as common substantial shareholders of the acquirer and the target company would have to abstain from voting. A substantial shareholder is one who holds five per cent or more of a company’s shares. Furthermore, in accordance with the Companies Act, the scheme also requires the sanction of the Singapore High Court (the “High Court”). Once an order for a scheme of arrangement has been approved by the High Court, it binds all shareholders, including those who had objected to it at the scheme meeting or in the High Court.

In a scheme of arrangement, the target company will issue a scheme document to its shareholders. Essentially, the scheme document is a circular to convene, at the direction of the High Court, a general meeting of the shareholders of the target company to approve the scheme of arrangement and which also contains an explanatory statement to explain to shareholders the effect of the implementation of the scheme. In order to satisfy the conditions (set out above) to obtain an exemption from selected provisions of the Take-over Code, the scheme document must disclose the names of those common substantial shareholders, and persons who would acquire more voting rights as a result of the scheme, who are to abstain from voting. The scheme document must also disclose their voting rights in the scheme company and/or the new entity after the scheme of arrangement, and furthermore state that by voting for the scheme, the shareholders are agreeing to the person acquiring or consolidating effective control without having to make a general offer.

Amalgamation Process

As an alternative to the scheme of arrangement, an acquisition of a public company may be effected through an amalgamation process. Such a process may involve either two or more companies amalgamating and continuing as one company or two or more companies amalgamating and forming a new company. The main difference of the amalgamation process is that it does not require the sanction of the High Court, unlike a scheme of arrangement. The clearance of the SIC is required for the exemption of certain provisions of the Take-over Code. Exemptible provisions include those relating to the offer timetable and acceptances. The SIC would normally grant the application for exemption if the conditions set out above which are also applicable to schemes of arrangement are met. Additionally, the SIC would require the amalgamation proposal to be posted within 35 days of the announcement of the amalgamation, and for the amalgamation to be effective by 5:30p.m. on the 60th day after the date of posting of the amalgamation proposal.

The following approvals are required for an amalgamation process:

- an amalgamation proposal, containing the information required by the Companies Act, must be approved by the members of the amalgamating company by special resolution and by any third party if so provided for in the amalgamation proposal;
- the board of directors of each amalgamating company, before the general meeting, has:
 - resolved that the amalgamation is in the best interest of the amalgamating company; and
 - made a solvency statement in relation to each of the amalgamating company and the amalgamated company, in each case in accordance with the Companies Act;
- each director who votes in favour of the resolution and the making of the solvency statements described above has signed a declaration that certain specified conditions set out in the Companies Act are satisfied and the grounds for that opinion;
- the board of directors of each amalgamating company has sent to every member of the amalgamating company, not less than 21 days before the general meeting, inter alia, a copy of the amalgamation proposal, the declaration of the directors set out above, a statement of any material interests of the directors and such further information and an explanation as may be necessary to enable a reasonable member of the amalgamating company to understand the nature and implications, for the amalgamating company and its members, of the proposed amalgamation; and
- the directors of each amalgamating company have, not less than 21 days before the general meeting, sent a copy of the amalgamation proposal to every secured creditor of the amalgamating company as well as published in at least one daily English newspaper a notice of the proposed amalgamation.

In order to effect the amalgamation, the documents specified in Section 215E of the Companies Act must be filed with the Registrar. Upon the receipt of the relevant documents and fees, the Registrar shall issue a notice of amalgamation. The effective date of the amalgamation is the date shown on such notice of amalgamation, which is either the date of filing with the Registrar or the date specified in the amalgamation proposal on which the amalgamation is intended to be effective (if it is to be on or after the date of such filing).

On the effective date of the amalgamation, all property, rights and privileges of each amalgamating company are transferred to and vested in the amalgamated company. All liabilities and obligations of each amalgamated company are transferred to and become liabilities of the amalgamated company.

DUE DILIGENCE

Before an offer for a take-over or acquisition is made, the acquirer may require due diligence to be conducted on the target company. There is no standard method for carrying out due diligence. However, as shall be seen, the due diligence process is often at times limited by various legal and regulatory restrictions. While offerers seek to find out all they can about the target company, there is no obligation imposed on a target company to assist an offerer with its enquiries. If a target company provides information to an offerer, the Take-over Code requires that the same information has to be provided to any other bona fide offerer who later emerges. This duty to provide information to all competing offerers extends to persons seeking to acquire all or materially all of the assets and/or business of the target company. The directors of the target company have to

authorise the disclosure and bear in mind that their fiduciary duty is to act in the best interests of the target company.

Notably, any disclosure of information in the due diligence process by the target company is hampered by the restrictions on disclosure set out in the Listing Manual as well as the insider dealing laws and regulations. A listed company is subject to continuing disclosure requirements which require the company to keep the SGX, the company's shareholders and other holders of the company's listed securities informed of all material information relating to it, and as a corollary, a listed company cannot provide any information to a person which would put this person in a privileged dealing position. Any such disclosure by the target company may also give rise to insider dealing concerns under the SFA (see also the discussion on insider dealing).

Therefore, in a take-over scenario, there is more often than not only limited due diligence conducted by an offerer for a target company before a take-over bid is made. The offerer will have to rely largely on information that is already publicly available. This may be found in the target company's memorandum and articles of association and other documents and filings with the Registrar, including details of the company's directors, and details of the company's issued share capital and shareholders. Other public information may be found in any prospectus or shareholders' circular which the company has published. If the target company is listed, the company has a continuing obligation under the Listing Manual to keep the public informed of major new developments, including significant acquisitions and disposals and material trading developments. The listed company will also have to publish half-yearly financial information and other routine information such as results of meetings and dividend details. Various investment banks and broking houses also publish research by their analysts.

The SFA also requires the listed company to announce and notify the SGX of material information as it occurs or arises, in order for the SGX to disseminate it to the market, and any intentional or reckless failure to do so would be a criminal offence.

ANNOUNCEMENT OF OFFER

The Take-over Code requires that a bid must first be notified to the target company's board of directors or its advisers. Following an approach to the board of the target company which may or may not lead to an offer, the primary responsibility for making an announcement will normally rest with the board of the target company. The target company's board must then inform its shareholders without delay when it receives notification of a firm intention to make an offer from a serious source, irrespective of whether the target company's board views the offer favourably or otherwise. The target company's board must issue a paid press notice, or, where the offerer has published a paid press notice, an announcement.

Furthermore, when following an approach to the target company, the target company is the subject of rumour and speculation about a possible offer, or there is undue movement in its share price or a significant increase in the volume of share turnover, whether or not there is a firm intention to make an offer, the target company's board must make an announcement. When negotiations or discussions between the offerer and the target company are about to be extended to include more than a very restricted number of people, the target company's board must also make an announcement. When a company's board is aware of negotiations or discussions between a potential offerer and shareholders holding 30 per cent or more of the company's shares or when the board is itself seeking potential offerers, then where the company is the subject of rumour or speculation about a potential offer, or there is undue movement in the company's share price or a significant increase in the volume of share turnover, or where more than a very restricted number of potential purchasers or offerers are about to be approached by the board, the board must accordingly make an announcement. In these circumstances, the

target company or company concerned may also make a request to the SGX to grant a temporary halt in dealings in the securities of the relevant company.

The Take-over Code requires that absolute secrecy must be maintained before an announcement of a take-over offer is made. Therefore, where there is a leak regarding a potential take-over transaction, an offerer is required by the SIC to make an announcement clarifying its position. The Take-over Code provides that the potential offerer must make an announcement when, before an approach has been made to the target company, the target company is the subject of rumour and speculation about a possible offer, or there is undue movement in its share price or a significant increase in the volume of share turnover, and there are reasonable grounds for concluding that it is the potential offerer's actions (whether through inadequate security, purchase of the target company's shares or otherwise) which have directly contributed to the situation. The target company, if listed, may have to make an announcement to the SGX accordingly, in compliance with the Listing Manual's corporate disclosure policy.

In the announcement of an offer, there is no substantive difference between the procedure for hostile and recommended bids. Typically, in a hostile bid, the respective boards of directors of the offerer and target company make separate announcements and issue circulars separately. Previously, this was also the standard procedure in situations where the directors of the target company recommended the offer. In Singapore, in recent years, however, a handful of take-over offers have been carried out on a "recommended" basis, involving joint announcements and circulars issued by the offerer and the target company.

When a firm intention to make an offer is announced, the Take-over Code stipulates information which has to be stated, including:

- the terms of the offer;
- the identity of the offerer;
- details of any existing holding of securities which it owns or over which it has control or which is owned or controlled by its concert parties;
- details of any existing holdings for which it has received any irrevocable undertakings to accept the offer;
- all conditions to which the offer is subject, including normal conditions relating to acceptances; and
- details of any arrangement in relation to the offerer's shares or the target company's shares which might be material to the offer.

When an offerer announces a firm intention to make an offer, the offerer becomes obliged under the Take-over Code to post an offer document not earlier than 14 days, but not later than 21 days, after the announcement. In cases where the offer is for cash or includes an element of cash, an offer should, therefore, not be announced unless the offerer has the financial resources unconditionally available to allow it to satisfy all acceptances. The SIC would expect the financial adviser to the offerer (that is, a financial institution, such as a bank or investment bank, sponsoring the take-over) to confirm this. In a cash offer, the offer announcement must include a confirmation by the financial adviser or other appropriate independent party (such as the offerer's banker) that sufficient resources are available to the offerer to satisfy full acceptance of the offer.

ACTING IN CONCERT

In ascertaining whether take-over offers have to be made, the acquisition of shareholdings by an offerer includes shares acquired by that person taken together with shares held or acquired by persons acting in concert with him. The Take-over Code provides that persons acting in concert comprise individuals or companies who, pursuant to an agreement or understanding (whether formal or informal), cooperate, through the acquisition by any of them of shares in a company, to obtain or consolidate effective control of that company.

The following individuals and companies are presumed to be persons acting in concert with each other unless the contrary is established:

- a company, its parent, its subsidiaries and its fellow subsidiaries, all their associated companies, and companies whose associated companies include any of the above companies, and any person who has provided financial assistance (other than a bank in the ordinary course of business) to any of these entities for the purchase of voting rights;
- a company with any of its directors (together with their close relatives, related trusts as well as companies controlled by any of the directors, their close relatives and related trusts);
- a company with any of its pension funds and employee share schemes;
- a person with any investment company, unit trust or other fund whose investment such person manages on a discretionary basis, but only in respect of the investment account which such person manages;
- a financial or other professional adviser, including a stockbroker, with its client in respect of the shareholdings of the adviser and persons controlling, controlled by or under the same control as the adviser, and all the funds which the adviser manages on a discretionary basis, where the shareholdings of the adviser and any of those funds in the client total ten per cent or more of the client's equity share capital;
- directors of a company (together with their close relatives, related trusts and companies controlled by any of such directors, their close relatives and related trusts) which is subject to an offer or where the directors have reason to believe a bona fide offer for their company may be imminent;
- partners; and
- an individual, his/her close relatives, his/her related trusts, any person who is accustomed to act in accordance with the instructions of the individual and companies controlled by any of them, and any person who has provided financial assistance (other than a bank in the ordinary course of business) to any of these persons for the purchase of voting rights.

The Take-over Code states that it is not practicable to define "associate" in precise terms which would cover all the different relationships which may exist in a take-over or merger transaction. The term is intended to cover all persons (whether or not acting in concert with the offerer, the target company or with one another) who directly or indirectly own, or deal in, the shares of the offerer or target company and who have (in addition to their normal interests as shareholders) an interest or potential interest in the outcome of the offer. The Take-over Code also sets out those entities which the term "associate" will normally include, for instance:

- a parent company;
- a subsidiary;
- a fellow subsidiary and a holder of ten per cent or more of the equity share capital of the offerer or target company; and
- a person, other than a bank, who has provided financial assistance for the purchase of voting rights.

TYPES OF TAKE-OVER OFFERS

Take-over offers may generally take three forms under the Take-over Code. They may be either mandatory offers which are triggered by the offerer's shareholdings in the target company, or voluntary offers which are not. They could also be partial offers, in which the offerer does not seek to obtain 100 per cent of the shares in the target company. An offerer can seek irrevocable undertakings from the shareholders of the target company to accept its offer. Such undertakings must be publicly disclosed.

Where a company has more than one class of equity share capital, the Take-over Code provides that a comparable offer must be made for each class, and the SIC must be consulted in advance in such cases. The Take-over Code also provides that where a target company has convertible securities in issue, the offerer shall also make an appropriate offer to the holders of those convertible issues. The Notes to the Take-over Code provide guidance on the appropriate offer price for instruments convertible into, rights to subscribe for, and options in respect of, securities being offered or which carry voting rights.

Mandatory Offers

Generally, there are no restrictions on an offerer building a significant stake in a target company as long as a mandatory offer is not triggered. The circumstances wherein mandatory offers are triggered are set out in the Take-over Code. Rule 14 of the Take-over Code provides that a mandatory offer is triggered when an offerer acquires, whether by a series of transactions over a period of time or not, shares which taken together with shares held or acquired by persons acting in concert with it amounts to 30 per cent or more of shares carrying voting rights of the target company. A mandatory offer is also triggered when an offerer and persons acting in concert with it hold between 30 per cent and 50 per cent of the target company's shares carrying voting rights, and acquire in aggregate more than one per cent of the target company's shares carrying voting rights in any rolling six-month period.

In a mandatory offer, the offer price cannot be lower than the highest price paid by the offerer or any of the parties acting in concert with it for any shares carrying voting rights during the offer period and within the six months leading up to the beginning of the offer period. The consideration paid in the mandatory offer should be in cash or be accompanied by a cash alternative. A mandatory offer is conditional upon the offerer obtaining acceptances which will result in the offerer and persons acting in concert with it holding shares carrying more than 50 per cent of the voting rights of the target company. Generally, no other conditions are permitted to be imposed in a mandatory offer. An exception to this rule applies to a mandatory offer where the parties are seeking clearance with the CCS under the Competition Act. In such a situation, the SIC will allow an additional condition relating to the CCS process to be imposed.

Chain Principle

Where an offerer acquires more than 50 per cent of the voting shares of a target company and the target company holds 30 per cent or more of the voting shares of a

public company in Singapore, and as a result the offerer acquires or consolidates control of the Singapore public company because the target company itself had effective control of the Singapore public company, the offerer may be required to make a mandatory take-over offer for the Singapore public company. Note 6 to Rule 14.1 of the Take-over Code states that the SIC will not normally require an offer to be made in these circumstances unless the Singapore public company constitutes or contributes significantly to the target company in respect of assets, market capitalisation (where both companies are listed), sales or earnings. The SIC should be consulted in all cases which may come within the scope of Note 6 to Rule 14.1 to establish whether, in the circumstances, any obligation arises to make a mandatory offer.

Whitewash

In certain situations, for example, one which involves a “back-door listing”, the SIC may on application grant a waiver to an offerer from making a mandatory take-over offer. Such a waiver is typically subject to the condition that a majority of the independent shareholders present at a general meeting of the target company approve, on a poll, a separate resolution (typically referred to as a “whitewash” resolution) waiving their rights to receive a take-over offer. The offerer and persons acting in concert with it must abstain from voting on the whitewash resolution.

The Take-over Code contains a Whitewash Guidance Note at Appendix 1 and sets out in general the procedure to be followed if the SIC is to be asked to waive the obligation to make a general offer under Rule 14 of the Take-over Code which would otherwise arise where, as a result of the issue of new securities as consideration for an acquisition or a cash injection or in fulfilment of obligations under an agreement to underwrite the issue of new securities or upon the exercise of conversion of convertibles, a person or group of persons acting in concert acquires shares which give rise to the obligation to make a general offer.

Voluntary Offers

A voluntary offer occurs where the offerer makes an offer for all the shares of the target company and this offer does not trigger the mandatory offer rules in Rule 14 of the Take-over Code. Voluntary offers are provided for in Rule 15 of the Take-over Code. The offerer can make a voluntary offer at any time unless it becomes obliged to make a mandatory offer. A voluntary offer must always be conditional on the offerer and its concert parties acquiring more than 50 per cent of the target company. In addition, the offerer can stipulate other objective conditions such as a particular level of acceptances, shareholders’ approval and certain regulatory approvals, where these are applicable, without reference to the SIC. The SIC should be consulted where other conditions save for those specified above are attached. In the case of voluntary offers conditional on high-level acceptances, the SIC will allow such offers where the offerer states clearly in the offer document the level of acceptances upon which the offer is conditional and the offerer satisfies the SIC that it is acting in good faith in imposing such a high level of acceptance. Generally speaking, the conditions which may be attached to a voluntary offer must not be of a kind whose fulfilment is dependent on subjective interpretation or discretion of the offerer. As an exception to this rule, the SIC allows an offerer to subject a voluntary (but not mandatory) offer to a condition that the CCS issues a favourable decision allowing the voluntary offer to proceed on terms acceptable to the offerer.

Note 4 to Rule 15.1 of the Take-over Code provides that the SIC will consider allowing the offerer to revise the initial acceptance level to a lower level (but above the 50 per cent as required by Rule 15.1) during the course of the voluntary offer, provided the revised offer remains open for another 14 days following the revision. In addition, shareholders who have accepted the initial offer should be permitted to withdraw their acceptance within eight days of notification of the revision. The revised acceptance level will take into account withdrawals and new acceptances as at the close of the offer.

In a voluntary offer, the offer price cannot be lower than the highest price paid by the offerer or any of its concert parties for any shares carrying voting rights in the target company during the offer period and within the three months leading up to the beginning of the offer period. The offer may be in cash or securities or a combination thereof.

The Take-over Code provides that where the offerer and any of its concert parties have bought for cash during the offer period, and within six months prior to its commencement, shares of the target company carrying ten per cent or more of the voting rights of that class, then an offer must be in cash or accompanied by a cash alternative at not less than the highest price paid by the offerer or any concert parties during the offer period and within six months prior to its commencement. A cash offer may also be required where in the view of the SIC there are circumstances which render such a course necessary.

In addition, when the offerer and any of its concert parties purchase target company shares carrying ten per cent or more of voting rights in exchange for securities during the offer period and in the three months prior to the commencement of the offer period, such securities will normally be required to be offered to all other holders of shares of that class in a take-over offer.

The SIC is given the discretion to require securities to be offered even in cases where the amount purchased is less than ten per cent or the purchase took place more than three months prior to the commencement of the offer period, where the vendors are directors or otherwise closely connected with the offerer or the target company.

The SIC should be consulted when ten per cent or more of the voting rights of the target company has been acquired during the offer period and six months prior to the commencement period for a mixture of securities and cash.

Partial Offers

Partial offers are voluntary offers for less than 100 per cent of the outstanding shares in a target company. The provisions relating to partial offers are found in Rule 16 of the Take-over Code. All partial offers must be approved by the SIC and Rule 16 sets out situations where the offerer makes an offer for less than 30 per cent, for between 30 per cent and 50 per cent, and for between 50 per cent and 100 per cent of the target company's shares carrying voting rights.

The Take-over Code provides that the SIC will normally grant consent for a partial offer which could not result in the offerer and persons acting in concert with it holding shares carrying 30 per cent or more of the voting rights of the target company. There is no requirement for a target company to seek competent independent advice for partial offers that result in an offerer holding less than 30 per cent.

The SIC will not grant consent in the case of a partial offer which could result in the offerer and its concert parties holding shares carrying not less than 30 per cent but not more than 50 per cent of the voting rights of the target company.

In the case of a partial offer which could result in the offerer and its concert parties holding shares carrying more than 50 per cent but less than 100 per cent of the voting rights of the target company, consent will not normally be granted by the SIC unless the conditions set out in Rule 16.4 of the Take-over Code are satisfied. These conditions include the requirement that the partial offer is not a mandatory offer under Rule 14 of the Take-over Code and that the partial offer must be approved by shareholders of the target company.

Furthermore, the offerer and parties acting in concert with it must not acquire shares in the target company six months prior to the announcement and in the period between applying for approval from the SIC and making the partial offer and during the offer period and during the six-month period after the close of the partial offer.

The Take-over Code also provides that the SIC will not normally consent to a partial offer which could result in the offerer and its concert parties holding more than 50 per cent of the voting rights of the target company, unless the partial offer is conditional, not only on the specified number or percentage of acceptances being received, but also on approval by the target company's shareholders, where the offerer together with parties acting in concert with it hold 50 per cent or less in the target company prior to the announcement of the partial offer. Where the offerer and its concert parties hold more than 50 per cent of the voting rights of the target company, approval of the target company's shareholders would be required if the partial offer could result in the offerer and its concert parties holding more than 90 per cent of the target company, or the target company breaching the minimum free float requirement under the SGX Listing Rules. The offerer, parties acting in concert with it and their associates are not allowed to vote on the partial offer.

Generally, the provisions in the Take-over Code applicable to a voluntary offer will also apply to partial offers and the documents required for a partial offer will also be required in relation to a voluntary offer. Consideration for a partial offer may be in the form of cash or securities, or a combination of both. Similar to the situation of a voluntary offer, if the offerer and its concert parties had purchased for cash, shares carrying ten per cent or more of the voting rights of the target company during the offer period and within six months prior to the commencement of a partial offer, the partial offer shall be in cash or accompanied by a cash alternative at not less than the highest price paid for shares in the target company by the offerer and its concert parties during the offer period and within six months prior to the commencement of the partial offer. Likewise, when the purchase was made in exchange for securities, such securities will normally be required to be offered to all other holders of shares of that class.

BIDS

Failed Bids

A take-over offer is unsuccessful if the offer does not become unconditional in all respects. In such a case, the Take-over Code provides that except with the consent of the SIC, where an offer other than a partial offer does not become unconditional in all respects, the offerer and its concert parties may not, within 12 months from the date on which such offer is withdrawn or lapses, either make an offer for the target company or acquire shares in the target company if the offerer or its concert parties would thereby become obliged to make a mandatory offer for the target.

Except with the consent of the SIC, where the offerer and its concert parties hold more than 50 per cent of the target company following an offer other than a partial offer, the offerer cannot make a second offer for the target company or acquire shares from any shareholder of the target company at a price higher than the offer price within six months of the close of the first offer.

In the case of partial offers, any person who intends to make a partial offer for the same target company within 12 months from the date of the close of a previous partial offer (whether successful or not) must seek the SIC's prior consent. The SIC will not normally grant its consent unless the subsequent partial offer is, as would be normally required, recommended by the board of the target company and proposed to be made by a person not acting in concert with the previous offerer.

Competitive Bids

If a competing bid is announced while an existing offer is open for acceptance, the first offerer's offer period may be extended past the 60-day period from the posting of its offer document, with the permission of the SIC.

BREAK FEES

One recent change to the Take-over Code was the introduction of rules governing break fee arrangements. An offerer or potential offerer may negotiate break fees with the target company if certain specified events occur which have the effect of preventing the offer from proceeding or causing it to fail. For instance, where the board of the target company recommends a higher competing offer.

A break fee is in the form of a cash sum payable by the target company. In all cases where a break fee is proposed, certain safeguards must be observed. In particular, a break fee must be minimal, and normally must not exceed one per cent of the value of the target company calculated by reference to the offer price. The revised Take-over Code provides guidelines for calculating the one per cent limit. Moreover, the board of the target company and its financial adviser must provide, in writing, to the SIC:

- a confirmation that the break fee arrangements were agreed as a result of normal commercial negotiations;
- an explanation of the basis, appropriateness and circumstances in which the break fee becomes payable;
- any relevant information concerning possible competing offerers, for example, the status of any discussions, the possible terms, any pre-conditions to the making of an offer, and the timing of any such offer;
- a confirmation that all other agreements or understandings in relation to the break fee arrangements have been disclosed; and
- a confirmation that they each believe the fee to be in the best interests of the shareholders of the target company.

Any break fee arrangement must be fully disclosed in the offer announcement and offer document.

The rule on break fees also applies to:

- any other favourable arrangements with an offerer or potential offerer which have a similar or comparable financial or economic effect, even if such arrangements do not actually involve any cash payment. Such arrangements include, but are not limited to, penalties, put or call options, or other provisions having similar effects, regardless of whether such arrangements are considered to be in the ordinary course of business; and
- the payment of an inducement fee in the context of a “whitewash” transaction. In this context, the one per cent test will normally be calculated with reference to the value of the target company immediately prior to the announcement of the proposed “whitewash” transaction.

The SIC must be consulted at the earliest opportunity in all cases where a break fee or any similar arrangement is proposed.

OFFER TIMETABLE

The Take-over Code sets out a timetable for take-overs to protect the management of the target company from being indefinitely distracted by dealing with a bid and to limit market uncertainty about the fate of the target company.

The offer document should normally be posted not earlier than 14 days but not later than 21 days from the date of the offer announcement. The target company then has 14 days after the posting of the offer document to post an offeree document to its shareholders. An offer must initially be open for at least 28 days after the date on which the offer document is posted.

The offer may, with the consent of the SIC, be extended for up to 60 days following the day on which the offer document was posted. An extension beyond 60 days will normally only be granted by the SIC if there is a competing bid.

The following table sets out an indicative take-over timetable:

No.	Time	Action
(1)	T	Offerer announces intention to make offer for target company
(2)	Around T + 1 as soon as possible after (1)	Target company releases holding announcement
(3)	Around T + 2 as soon as possible after (2)	Target company appoints independent financial adviser on offer
(4)	T+ 21 or earlier (but not earlier than 14 days and not later than 21 days after (1))	Offerer posts offer document to shareholders of target company and lodges the same with the SGX and the SIC
(5)	T + 35 or earlier (not later than 14 days after (4))	Target company posts offeree document to its shareholders, containing advice of the independent financial adviser and recommendation of the target company's directors on the offer and lodges the same with the SGX and the SIC
(6)	T + 49 (not earlier than 28 days after (4))	Offer closes, unless extended
(7)	T + 81 (60 days from (4))	Latest closing date of offer

DOCUMENTATION

All documents, announcements and advertisements addressed to shareholders issued during the course of an offer must satisfy the highest standards of accuracy and the information given must be adequately and fairly presented. All documents issued to shareholders and advertisements published in connection with an offer must state that the directors of the offerer or, as the case may be, the target company have taken all reasonable care to ensure that the facts stated and the opinions expressed in those documents are fair and accurate, and that where appropriate, no material facts have been omitted. The documents must also state that the directors jointly and severally accept responsibility that all reasonable care was taken to ensure that the facts stated

and the opinions expressed in the documents are fair and accurate and, where appropriate, no material facts have been omitted.

The principal documents that would be encountered in the take-over process are:

- the take-over announcement;
- the offer document;
- the offeree document or circular containing a fairness opinion from the independent financial adviser; and
- the recommendation of independent directors of the target company whether or not to accept the take-over offer.

The Take-over Code sets out the information that has to be included in an offer document, including

- the offerer's intentions relating to the target company and its employees;
- disclosure of interests in securities held by the offerer;
- its directors or concert parties;
- financial information about the offerer; and
- conditions of the offer and any special arrangements.

Information about irrevocable undertakings must be set out in the offer document and any document evidencing an irrevocable undertaking to accept the offer should be made available for inspection.

As a general principle, the Take-over Code requires that the shareholders in the target company must be put in possession of all the facts necessary for the formation of an informed judgment as to the merits or demerits of an offer. The obligation of the offerer in these respects towards the shareholders of the target company is no less than the offerer's obligation towards its own shareholders.

The Take-over Code also sets out the information that must be contained in an offeree document. The offeree document has to contain the advice of the independent financial adviser of a target company (except in the case of a partial offer for less than 30 per cent of the target company) and the recommendation of the target company's directors on the offer. In the case where all the directors of the target company board are not independent in relation to the offer, the responsibility for making a recommendation to shareholders will reside primarily with the independent financial adviser.

The offeree document must also include:

- information on the shareholdings of the target company in the offerer;
- the shareholdings in the target company and in the offerer in which the directors of the target company are interested;
- the shareholdings in the target company controlled by its independent financial adviser; and
- whether the target company's directors intend to accept or reject the offer, in respect of their own beneficial shareholdings.

Information as to certain arrangements affecting directors must also be provided in the offeree document, for instance, details of any agreement or arrangement made between any director of the target company and any other person in connection with or conditional upon the outcome of the offer.

DUTIES OF DIRECTORS AND CONTROLLING SHAREHOLDERS

The Take-over Code prevents a target company from frustrating a bona fide offer. When a target company's board of directors has been notified of a bona fide offer, or after the target's board has reason to believe that a bona fide offer is imminent, the board cannot, without shareholders' approval, take any steps which could effectively result in either the offer being frustrated, or denial of the target shareholders' opportunity to decide on the merits of the offer. The target company's board of directors must obtain competent independent advice when it receives an offer or is approached with a view to an offer being made and must subsequently inform the shareholders of the substance of this advice.

Under common law, the directors of a company in Singapore owe a duty to act in the interests of the company and its shareholders as a whole. Controlling shareholders are not subject to any common law or fiduciary duties similar to those imposed on directors, and are therefore entitled to act in accordance with their own interests. However, controlling shareholders of a listed target company may be precluded from voting at a general meeting of shareholders to approve a take-over or merger if they have a conflict of interest, for instance, if they have a substantial interest in the offerer.

Shareholder Disclosures

The Take-over Code provides that parties to a take-over transaction and their associates are free to trade in the target company's shares but are subject to additional disclosure obligations during the offer period. The parties to a take-over and their associates are required to disclose shares purchased or sold by them on their own account on a daily basis. The term "associate" will normally include a holder of ten per cent or more of the equity share capital of the offerer or target company.

Disclosure has to be made to the SGX and the SIC and to the press. Dealings by an offerer or the target company or by an associate may be disclosed by the party concerned or by an agent, for instance, an investment bank or stockbroker, who acts on its behalf. Where there is more than one agent, particular care should be taken to ensure that the responsibility for disclosure is agreed between the parties and that it is neither overlooked or duplicated.

Apart from the Take-over Code, shareholder disclosure obligations are found in the Companies Act and the SFA, and are required by the SGX with regard to companies listed thereon. Disclosure obligations arise when a shareholder becomes a substantial shareholder, being a shareholder who owns five per cent or more of the aggregate nominal amount of all the voting shares in a company. Disclosure must subsequently be made if there is a change in the substantial shareholder's "percentage level" of interest in voting shares in a company. "Percentage level" is defined in Section 83 of the Companies Act.

In summary, substantial shareholders are required to make disclosure of changes of their interest in threshold bands of one per cent. Disclosure is required to be made by the shareholder to the listed company under the Companies Act and to the SGX under the SFA. The listed company is also obliged to pass the details on to the SGX for public release.

Financial Disclosures

An offer document and an offeree circular must contain, among other things, the following financial information about the offerer or the target company, as the case may be:

- details, for the last three financial years, of turnover, exceptional items, net profit or loss before and after tax, minority interests, net earnings per share and net dividends per share and details relating to the foregoing in respect of any interim statement or preliminary announcement made since the last published audited accounts;
- a statement of the assets and liabilities shown in the last published audited accounts;
- particulars of all subsequent material changes (or where appropriate, a negative statement) in the financial position of the offerer or the target company, as the case may be, which are known;
- significant accounting policies together with the notes of the accounts which are of major relevance for the interpretation of the accounts; and
- where, because of a change in accounting policy, figures are not comparable to a material extent, this should be disclosed and the approximate amount of the resultant variation should be stated.

Any material change (together with particulars of such change) in the financial position or prospects of a target company since the date of the last balance-sheet laid before the target company in a general meeting that is known to an offerer must also be disclosed in an offer document.

Separately, when a profit forecast appears in any document addressed to the shareholders in connection with the take-over offer, the following reports are required (except for a forecast made by an offerer offering solely cash):

- a report by the auditor or reporting accountant on the accounting policies and calculations for the forecast;
- a report by the financial adviser, if he is mentioned in the document containing the forecast, on his view on whether the forecast has been made after due and careful enquiry; and
- where revenue or profit from land and buildings is a material element in the forecast, a report by an independent valuer.

SUSPENSION OF TRADING AND COMPULSORY ACQUISITION

If the offerer and its concert parties should, as a result of the offer or otherwise, own or control above 90 per cent of the issued share capital of the target company, the SGX may suspend the listing of the shares in the target company until such time when the SGX is satisfied that the appropriate minimum shareholding spread stipulated by the SGX is met. The Listing Manual provides for a minimum shareholding spread of ten per cent of shares, excluding treasury shares (excluding preference shares and convertible equity securities), held by the public (which excludes directors and substantial shareholders).

An offerer who acquires not less than 90 per cent of the issued target company shares pursuant to a take-over offer (excluding those shares held at the date of the offer by, or by a nominee for, the offerer or its holding company, subsidiary or fellow subsidiary) is entitled to compulsorily acquire any remaining target shares under Section 215 of the

Companies Act. Conversely, dissenting shareholders of the target company have a right to be bought out by the offerer if the offerer and its subsidiaries hold 90 per cent or more of the issued target company shares.

To do so, the offerer needs to deliver a notice of the compulsory acquisition to the dissenting shareholders of the target company, who then have the right to request for the list of dissenting shareholders. The dissenting shareholders then have one month from the date of notice or 14 days from the date on which the list of dissenting shareholders is provided (whichever is the later) to object to the compulsory acquisition by filing an application with the High Court. If there is no objection or any objection is dismissed, all the share certificates in the target company in the name of the dissenting shareholders are cancelled and new share certificates are issued in the name of the offerer. The target company will hold the consideration for the acquisition on trust for dissenting shareholders until claimed by them.

If, pursuant to an offer, the offerer fails to acquire a sufficient number of target company shares to compulsorily acquire the remaining target company shares, subject to obtaining the approval of the SIC, the offerer may request the target company to apply to the SGX to be de-listed if it satisfies the following requirements under the Listing Manual. The target company has to convene a general meeting of the shareholders of the target company to seek their approval for the delisting. The delisting resolution has to be approved by a majority of not less than 75 per cent, and must not be voted against by ten per cent or more, in nominal value of the target company shares voted at the general meeting. The directors and controlling shareholders of the target company are not precluded from voting on the resolution. A reasonable exit alternative, which is normally in cash, has to be offered to the shareholders and the target company must appoint an independent financial adviser to advise on the exit offer.

INSIDER DEALING

If an offerer is in possession of price-sensitive information regarding the target company, it cannot deal in the target company's shares until the information has become public or is no longer price-sensitive. In the context of a take-over, being in possession of price-sensitive information would prevent the offerer from making the bid unless the information is disclosed to all the shareholders of the target company as well.

The provisions relating to insider dealing are found in the SFA. An insider dealer may be subject to criminal prosecution, to a civil action maintained by an aggrieved investor, as well as to a civil action taken by the MAS.

TAX ISSUES

Transfer for restructuring purposes may qualify for stamp duty exemption, subject to certain conditions. Following amendments to the Stamp Duties Act, Chapter 312 of Singapore, the scope of stamp duty exemptions has been expanded, subject to certain conditions, in relation to transfers of assets between associated companies and upon the reconstruction and amalgamation of companies.

Insofar as income tax on realised gains is concerned, there is no imposition of capital gains tax in Singapore. Therefore, when the shareholders of a target company dispose of their target shares, the question is whether the gain realised, if any, constitutes capital gains or trading income, the latter of which is subject to income tax. Whether the gain is treated as capital gains or trading income depends on whether the relevant shareholders of the target company are regarded by the Inland Revenue Authority of Singapore to be share traders.

LABOUR AND EMPLOYEE BENEFITS

A take-over or merger transaction involving a transfer of shares, as opposed to a transfer of a business undertaking, does not typically affect the employees of the acquiring company or the target company. An employee of the target company will continue to be employed by the target company and will not be transferred to the offerer. However, in a transfer of business undertaking, the Employment Act, Chapter 91 of Singapore, provides that all employees of the target that fall under the Employment Act with respect to the undertaking at the date of the transfer will automatically become employees of the offerer on the same terms and conditions as their employment under the target company. Employees that fall under the Employment Act are those not holding management, executive or confidential positions. The transfer of employees who do not fall under the Employment Act is a matter to be agreed between the transferor, the transferee and the relevant employees.

In general, there are no statutory or regulatory requirements for employee consultation and approval in relation to a take-over, save that the offerer may not enter into any arrangements with employees who are also shareholders of the target company that extend favourable conditions not granted to all shareholders. In addition, the offer document would have to disclose (or where appropriate, contain negative statements):

- details of any payment or other benefit which will be made or given to any director of a target company or its related corporations (including a director who is also an employee of such corporation) as compensation for loss of office or otherwise in connection with the take-over offer; and
- whether and in what manner the emoluments of the directors of an offerer (including a director who is also an employee of the offerer) will be affected by the acquisition of the target company.

OVERSEAS SHAREHOLDERS

The laws of other jurisdictions may be relevant to a take-over offer if the target company has shareholders who are resident or incorporated outside Singapore. As a general guideline, specific advice should be obtained in relation to any jurisdiction in any of the following circumstances:

- the securities of the target company are listed or dealt in on a securities exchange in that jurisdiction;
- a significant percentage of the target securities are owned by overseas shareholders in that jurisdiction;
- there is a large number of overseas holders of the target securities in that jurisdiction;
- the securities of the target company have been marketed in that jurisdiction; or
- the target company is required to comply with any filing or reporting requirements relating to its securities in that jurisdiction.

EMERGING ISSUES AND DEVELOPMENTS

On 8 June 2007, the SIC announced the extension of the Take-over Code to property trusts structured as collective investment schemes (“REITs”). This development will allow for the safeguards in the Take-over Code to apply to listed REITs and will provide a

framework for the fair and equal treatment of all unitholders in a take-over and merger situation. The Take-over Code and the SFA will be amended to give effect to the extension of the Take-over Code to REITs. In the meantime, the SIC prescribed that parties intending to acquire 30 per cent or more of the total units of a REIT or, when holding not less than 30 per cent but not more than 50 per cent of the total units of a REIT, acquire more than one per cent of the total units of a REIT in any six-month period, should make a general offer for the REIT. The SIC should be consulted in cases of doubt.

The SIC is also studying whether the changes should be made to the Take-over Code to adopt the recent changes in the United Kingdom regime which has considerably tightened the aggregation and disclosure rules in respect of dealings in options and derivatives. In the meantime, a person who wishes to acquire options or derivatives should consult the SIC beforehand, if the aggregation of the shares underlying such options or derivatives with those already owned causes such person to exceed the mandatory offer threshold.