Guide to Takeovers and Mergers in Singapore
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INTRODUCTION

This guide discusses some of the regulatory requirements to be complied with by parties involved in a take-over in Singapore, following the introduction of the new Singapore take-over code in April 2007.

Readers should note that this guide seeks only to be an introduction to some of the compliance obligations involved in a take-over in Singapore and should not be treated as comprehensive.
WHAT GOVERNS AND REGULATES A TAKE-OVER AND MERGER IN SINGAPORE

In Singapore, the take-over of a public company ("company") is principally regulated by the following regulations and statutes.

**Code on Take-overs and Mergers**

While the Code is non-statutory in nature, it is issued by the Monetary Authority of Singapore pursuant to the power conferred upon it by sections 139(2) and 321 of the SFA.

The body which administers and polices and the provisions of the Code is the Securities Industry Council (SIC or Council).

Basically, the Code states its rules on the Approach, the Conduct, the Timing, the Documentation and the various types of Offers and their terms in a Take-over.

**General principles**

(a) **Rules 5, 6:** there are limits on the freedom of action which directors would normally have, outside the context of a take-over, to act in what they consider to be in the best interests of the company and its shareholders. In particular, the directors must act in their capacity as such, and not have regard to their own interests or those derived from personal or family shareholdings;

(b) **Rule 9:** shareholders of the Target Company must be given sufficient information, advice and time to make an adequate assessment and an informed decision on the Offer. No relevant information must be withheld from them;

(c) **Rule 8:** all shareholders of the same class must be treated equally. This applies not only to the terms of the Offer but also to the nature, quality and timing of information made available to them;

(d) **Rule 25:** all documents to shareholders must be prepared to the highest standards of care and accuracy, to ensure that they are not misleading. Special care is required in respect of profit forecasts;

(e) **Rules 2, 3:** the Offer should only be announced after careful consideration and when the Offeror has every reason to believe that it can and will continue to be able to implement the Offer in full; and

(f) **Rule 12:** all parties to a take-over must make full and prompt disclosure of all relevant information and use every endeavour to prevent the creation of a false market in the shares of the Offeror or the Target Company.

**Application**

The Code applies to take-over offers of shares of:

- Singapore incorporated public companies listed on the SGX-ST or other jurisdictions
  - Unlisted Singapore incorporated public companies with net tangible assets of S$5 million or more
  - Foreign incorporated companies listed on the SGX-ST
- Business trusts registered in Singapore or elsewhere but listed on the SGX-ST

Presently, the Code also has a table of prescribed lodgement fees for various thresholds of takeovers.

Although the Code is not law, a breach of the Code may prompt the SIC to take appropriate action against the offending party by depriving it of any presence in the securities market or issuing a private or public censure against it.

**Other Changes w.e.f 1st April 2007**

Tiered-fee structure: A tiered fee structure is introduced for lodgment of offer documents and whitewash circulars.

**IFA:** An Independent Financial Adviser is required to be appointed to make a recommendation of an offer in cases where the directors of the offeree face a conflict of interest in order that shareholders of an offeree are provided with unbiased advice.
Convertible Instruments: The whitewash validity period for convertible instruments is increased from 2 to 5 years in response to market requests to facilitate deal structuring.

Foreign Entities: With regard to foreign entities, the Code only applies to foreign incorporated companies and foreign registered trusts with a primary listing in Singapore.

Waiver from Code: The SIC has a discretion to waive the application of the code pertaining 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 unit holders respectively and with more than S$5 million worth of net tangible assets.

Practice Statement* of 8 June 2007 on Real Estate Investment Trusts (REITS)

On 8 June 2007, the SIC issued a practice statement on REITS (that is, property trusts structured as Collective Investment Schemes under the SFA). The SIC stated in the practice statement of 8 June 2007 that it had decided to extend the ambit of the Code to REITs.

The SIC stated that prior to amendments to the SFA and the Code by the Monetary Authority of Singapore ("MAS") to give effect to this decision of the SIC, it suggested that parties engaged in a take-over or merger transaction involving a REIT comply with the Code. In particular, parties intending to (i) acquire 30% or more of the total units of a REIT; or (ii) when holding not less than 30% but not more than 50% of the total units of a REIT, acquire more than 1% of the total units of the REIT in any six-month period, should make a general offer for the REIT. The SIC should be consulted in cases of doubt.

In the case of a REIT, references to shares, shareholders and board of a company throughout the Code would, where appropriate, refer to units, unitholders and the manager. Where there is any doubt as to whether a proposed course of conduct in respect of mergers or take-overs involving REITs accords with the General Principles or the Rules of the Code, parties or their advisers should consult the Council in advance.

Securities and Futures Act (Cap. 289) (the "SFA")

Part VIII of the SFA contains legal provisions pertaining to take-overs.

Offences

The SFA lists offences relating to take-overs. For instance, pursuant to Section 140, it is an offence for anyone to make a take-over offer if he has no grounds to believe that he will be able to fulfill the relevant terms and conditions once the take-over offer is being accepted.

Application

Section 139 of the SFA effectively states that the Code shall “apply to and in relation to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all corporations or bodies unincorporate, whether incorporated or carrying on business in Singapore or not, and shall extend to acts done outside Singapore.”

Part VIII of the SFA applies to all offerors regardless whether they are incorporated or carrying on businesses in Singapore or are foreigners or Singapore citizens.

Companies Act (Cap. 50) (the “Companies Act”)

Sections 210, 212, 215

The Companies Act provides the framework for schemes of arrangement (Sections 210, 212) and amalgamations (Sections 215A) in corporate take-overs and mergers. For example, the compulsory acquisition of shares of minority shareholders (Section 215) of the target companies is governed by the Companies Act.

The CA also reinforces disclosure requirements on the part of substantial shareholders.

Section 82: Anyone (ie. including a body corporate) who acquires a substantial interest representing 5% or more in nominal value of the voting capital of any Singapore public company must notify the company of his interest within 2 days after becoming a substantial shareholder. The disclosure obligation only applies to the company’s issued share capital which carries the right to vote in all circumstances at general meetings. Where the company has different classes of shares, a person is a substantial shareholder if he has an interest of 5% or more of the nominal amount of all voting shares of that class.
Section 83: The CA also imposes a continuing obligation to give written notification to the company of subsequent changes to the interest or interests of a substantial shareholder. The notice must be given within 2 days after the date of change in the interest.

Listing Manual

The Listing Manual applies where the company acquiring or the target company is listed on the Singapore Exchange Securities Trading Limited (the “SGX-ST”).

Chapter 9 states requirements to be met in relation to IPTs. (Interested Person Transactions).

Chapter 10 primarily lists all continuing obligations including if a transaction crosses various thresholds, (eg discloseable, major, very substantial transactions).

Chapter 11 pertains to takeovers and complements the regulations in the Code.

For acquisitions and realizations, the Listing Manual imposes disclosure obligations as follows:

- Acquisitions and realisations in Chapter 7
- IPTs in Rules 905 and 906
- Discloseable transactions, major transactions or very substantial acquisitions or reverse take-overs in Chapter 10
- A Singapore listed company must immediately announce via SGXNET any notice of substantial shareholders’ interests in its securities or changes of such interests received by it. Such notice must contain the particulars set out in Appendix 7.3 of the Listing Manual.

**Competition Act Cap 50B**

The Competition Act prohibits mergers that result in a substantial lessening of competition within any market for goods or services in Singapore. Wef 1st July 2007, any party may notify or consult the Competition Commission of Singapore for a decision or guidance on any merger that it is about to undertake or that may affect it.

The Competition Act prohibits anti-competitive agreements (Section 34), the abuse of a dominant market position (Section 47) and mergers resulting in a substantial lessening of competition (Section 54).

The Act allows the Competition Commission of Singapore (“CCS”) to review and regulate mergers that have anti-competitive effects in Singapore.

Notwithstanding, there is no statutory requirement to notify agreements, conduct or mergers to the CCS.

- Prior regulatory approval is required for share-ownership in the following sectors:
  - Banks and finance companies
  - Insurance companies
  - Newspaper and broadcasting companies
  - Telecommunications companies
  - Exchanges (SGX-ST, Singapore Exchange Derivatives Trading Limited)
  - Clearing houses: The Central Depository (Pte) Ltd and the Singapore Exchange Derivatives Clearing Limited
  - Holding company of an approved exchange or a designated clearing house namely the Singapore Exchange
MAIN LIABILITIES IN A TAKE-OVER AND MERGER

**Insider Trading**

If an offeror is in possession of price-sensitive information relating to the target, he cannot deal with its shares until the information is no longer price sensitive and, in a take-over, he cannot bid unless the information is disclosed to all shareholders of the target or ceases to be price-sensitive. Therefore if during the course of negotiation an offeror is provided with price sensitive information from the target, the offeror must then take note of the insider trading prohibitions.

Rule 11.1 of the Code and Sections 218 and 219 of the SFA restrict dealing by persons in possession of confidential price sensitive information.

Sections 221 and 232 of the SFA impose criminal and civil penalties on persons who contravene the insider dealing provisions under the SFA.

**Market Manipulation**

It is an offence under the SFA to carry out any transaction in securities which manipulates the price of securities of a listed company with the intent to induce investors to deal with those securities or other related securities and, in a take-over, the associates of an offeror or the target may not acquire the shares of either the offeror or the target for the purpose of manipulating the price of either of these companies.

Anyone who commits the abovementioned offences may subject themselves to criminal prosecution or a civil suit by an affected investor or even a civil action by the MAS.
MODES OF ACQUISITION

One can acquire control of a Singapore public company by several forms of acquisition.

Take-over offer

These offers come in 3 forms:

1. Mandatory offer

What is a Mandatory Offer?

This is triggered under Rule 14 of the Code when an offeror and parties acting in concert with it acquire shares of the target in amounts crossing the threshold prescribed in Rule 14.

The offer is conditional upon the offeror obtaining a minimum level of acceptance which has the offeror and parties acting in concert with it holding shares that carry more than 50% of the voting rights of the target.

When is a Mandatory Offer triggered?

Under Rule 14 of the Code, a mandatory take-over offer is required to be made if:

a) A person 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 him) carry 30% or more of the voting rights of a company; or

b) A person who, together with persons acting in concert with him, holds between 30% and 50% of the voting rights in the Target Company and such person, or any person acting in concert with him, acquires in any 6-month period additional shares carrying more than 1% of the voting rights of the Target Company.

Exemption from a Mandatory Bid / Whitewash

If a person holds more than 50% of the voting rights of the Target Company, he will not be required to make any take-over offer if he acquires additional voting rights of the Target Company.

In certain circumstances, the Council may exempt a person from the obligation to make a mandatory bid and waive the requirements of the take-over provisions under the Code. The Notes on Dispensation from Rule 14 of the Code expressly provide that the Council will normally grant a “whitewash” waiver in the following circumstances:

a) Issues of new securities – where

(i) The obligation to make a mandatory take-over bid arises from the issue of new securities as consideration for an acquisition, a cash subscription or the taking of a scrip dividend and

(ii) There is an independent vote at a shareholders’ meeting approving the issue of the securities. A waiver will also normally be granted where (a) the obligation arises from the underwriting of an issue of new securities, (b) there is an independent vote at a shareholders’ meeting and

(iii) The underwriter puts in place clear and effective arrangements not to exercise the voting rights of these shares;

b) Enforcement or foreclosure of security for a loan, receivers, etc. - where shares in the Target Company constitute security for a loan and upon foreclosure or enforcement, the lender would incur the obligation to make a mandatory take-over bid;

c) Balancing blocks of 50% - in very exceptional cases, where shareholder(s) holding 50% or more of the votes attached to the remaining shares of the Target Company have, without receiving any inducement to do so, stated in writing that they will not accept any take-over offer by the Offeree Company for their shares in the Target Company, and such written undertaking is given before the acquisition by the Offeror of shares in the Target Company crossing the take-over threshold;

d) Placing and top up transactions – where a person (and the parties acting in concert with him) holding less than 50% of the voting rights in the Target Company, places out part of his holdings to one or more independent parties and then, as soon as practicable subscribes for such additional shares as he requires to
maintain the percentage interest in the Target Company which he held prior to the placement at a price substantially equivalent to the placing price after taking into account expenses incurred in the transaction; and

e) Share buy backs – where the whitewash procedure for share buy-backs in Appendix 2 of the Code is complied with.

f) Appendix 2 of the Code sets out briefly the procedure and conditions on which an exemption from the requirements of Rule 14 will be granted to directors and persons acting in concert with them who are obliged to make a take-over bid under Rule 14 following a share buy-back.

Although not specifically set out in the Code, a whitewash waiver has also been granted in the following circumstances:

g) Rescue (“white knight”) operations - where the Target Company is in a serious financial position and the rescue operation involves the issue of new shares in the Target Company to the rescuer which crosses the mandatory take-over threshold;

h) Group restructuring exercises - where a scheme of reconstruction to be implemented involves the transfer of one company’s controlling interest in the Target Company to another company (which is also controlled by the first-mentioned company) such that there is, in practice, no effective change in control of the Target Company at the ultimate holding company level;

Share Buybacks

Where a company buys back its shares, Appendix 2 of the Code (a copy of which is attached) provides that any resulting increase in the percentage of voting rights held by a shareholder and persons acting in concert with him will be treated as an acquisition for the purposes of Rule 14. A director (who is also a shareholder) and persons acting in concert with him would, in the absence of an exemption from the Council, become obliged to make a mandatory take-over bid if the effect of the company buying back its shares would be to increase their voting rights in the company to 30% or more, or if they together already hold between 30% and 50% of the voting rights, the effect would be to increase their voting rights by more than 1% in any 6-month period. This rule does not however apply to shareholders who are not acting in concert with any director of the company. Appendix 2 sets out the circumstances in which a shareholder, who is not acting in concert with any director of the Company, will be required to make an offer under Rule 14.

Conditions Imposed in a Mandatory Take-Over Bid

1) Except with the Council’s consent, a mandatory take-over offer must be conditional on, and only on, the Offeror receiving acceptances which together with shares acquired or agreed to be acquired by it before or during the Offer will result in the Offeror (together with parties acting in concert with it) holding shares carrying more than 50% of the voting rights attached to the Target Company’s voting shares.

2) Mandatory bids must always be in cash or provide for a cash alternative. The cash price must not be less than the highest price paid by the Offeror and persons acting in concert with it within the 6 months prior to the making of the Offer.

3) Except for the condition mentioned above in paragraph (1) i.e. with the Council’s consent, no acquisition of voting rights which would give rise to a mandatory take-over offer may be made if it is subject to any other conditions, consents or arrangements (including approval of the Offerors’ shareholders and any foreign regulatory authority).

The SIC’s consent is required if the offeror considers that the highest price should not apply in a particular case. Factors which the Council might take into account when considering an application for an adjusted price, include:

- The size and timing of the relevant purchases;
- The attitude of the board of the target company;
- Whether shares have been purchased at higher prices from directors or other persons closely connected with the offeror or the target company; and
- The number of shares purchased in the preceding six months.
There are changes in the Code wef 1st April 2007 on Mandatory Offers. Such changes pertain to the Chain Principle in Rule 14.3 and apply to situations where listed shares are offered as consideration under conditional share acquisition agreements and put and call options.

A person may acquire more than 50% of a company to which the Code does not apply (for example, a private limited company) and consequently, acquire or consolidate control of a second company to which the Code does apply. It is possible that this could be used as a back-door means of acquiring control in a company which is subject to the provisions of the Code. The Council should be consulted in all such cases to establish whether any obligation to make a mandatory take-over bid arises. The Code states that, the Council would not normally require a mandatory take-over offer to be made in such cases unless the second company constitutes or contributes significantly to the first company in the following aspects:

a. Assets;
b. Market capitalisation (where the first and second companies are listed);
c. Sales; or
d. Earnings.

The "relevant price" would from now depend on when the mandatory offer is triggered: within 3 months form the date of announcement of the conditional share acquisition agreements or the put and call option or after 3 months of such announcement. The relevant price can be determined in accordance with the principle stated in Rule 14.5 of the Code.

2. Voluntary Offer

What is a Voluntary Offer?

A Voluntary Offer is a take-over offer for the shares of a company made by an Offeror who has not incurred an obligation to make a Mandatory Offer under Rule 14.1.

An Offeror may choose to make a general offer for all equity shares in the Target Company (not already owned by it) even though not obliged to do so under Rule 14 of the Code.

Conditions

It is conditional upon the offeror and parties acting in concert with it acquiring more than 50% of the voting rights of the target company.

A voluntary take-over offer, unlike a mandatory offer, can be subject to conditions other than the acceptance condition. It must also stipulate an acceptance condition higher [but not lower] than the 50% level.

Apart from conditions as to acceptance level, shareholder approval and SGX approval, the Offeror should consult the Council on any other conditions it wishes to impose.

Generally, the fulfillment of conditions attached to an Offer must not be dependent to an unacceptable degree on a subjective interpretation of discretion of the Offeror nor lie in the Offeror’s hands. The Council will normally allow conditions which are objectively reasonable based on the circumstances of each case. Conditions are also subject to the principle that all shareholders of the same class of the Target Company are to be treated equally and fairly. A term which would result in shareholders of the same class being treated differently would not be acceptable.

A voluntary offer also need not be in cash or have a cash alternative but must be in cash or securities or in a combination thereof at the highest price (excluding stamp duty and commission) paid by the Offeror or a concert party for shares in the Target Company acquired during the Offer period and the 3 months prior to the making of the Offer.

However when an Offeror has acquired (or an Offeror and concert parties have together acquired) for cash 10% or more of the Target Company’s voting rights during the Offer period and the 6 months prior to the making of the Offer (or when the Council thinks it is otherwise necessary in order to give effect to the principle of equality of treatment), except with the Council’s consent:

a) the Offeror must make an Offer at not less than the highest price (excluding stamp duty and commission) paid for shares in the Target Company acquired during the Offer period and the 6 months prior to the making of the Offer; and
b) the Offer must be in cash or accompanied by a cash alternative.

Conditions pertaining to the level of acceptance, shareholder-approval for issue of new shares and SGX-ST-approval for listing may be attached without SIC’s consent.
Partial Voluntary Offers

Partial voluntary offers for a specified percentage of the Target Company’s equity shares may be made if the Council consents. It will normally do so if the offer could not result in the offeror and its concert parties holding 30% or more of the voting rights.

For offers which may result in a holding of 50% or more, the Council will not normally consent unless a number of requirements are satisfied including the obtaining of the approval of the Target Company’s shareholders. This can be done at a general meeting. A majority of more than 50% of the votes cast is required.

Minimum Price

The minimum price is the highest price paid by the offeror or any of the parties acting in concert with it for shares carrying voting rights in the target during the offer period and within 3 months prior to the commencement of the offer period.

3. Partial Offer

What is a Partial Offer?

Partial Offers are voluntary offers for some of the shares in the target.

The Council’s consent is required for any partial offer. The SIC will normally consent to a partial offer which could not result in the offeror and persons acting in concert with it holding shares carrying 30% or more of the voting rights of the offeree company.

The SIC will not consent to any partial offer which could result in the offeror and its concert parties holding shares carrying not less than 30% but not more than 50% of the voting rights of the offeree company.

The Council will not normally consent to a partial offer which could result in the offeror and its concert parties holding shares carrying more than 50% of the voting rights of the offeree company, unless:

a) The partial offer is not a mandatory offer under rule 14;

b) The offeror confirms and undertakes in its application for consent that it and its concert parties did not and will not acquire any voting shares (excluding voting shares acquired by the offeror and its concert parties via a rights issue and/or bonus issue without increasing their aggregate percentage shareholdings) in the target company:-

(i) in the 6 months prior to the date of the offer announcement and confirms this fact in the offer announcement; (ii) in the period between submitting the application for the Council’s consent and the making of the partial offer; (iii) during the offer period (except pursuant to the partial offer); and (iv) during a period of 6 months after the close of the partial offer, if the partial offer becomes unconditional as to acceptances. Council’s consent for purchases of shares in the offeree company by the offeror and its concert parties within 12 months of the close of a successful partial offer will normally be granted if such purchases are proposed to be made more than 6 months after the partial offer;

c) The partial offer is conditional, not only on the specified number or percentage of acceptances being received, but also on approval by the offeree company’s shareholders, where the offeror together with parties acting in concert with it hold 50% or less in the offeree company prior to the announcement of the partial offer. Where the offeror together with parties acting in concert with it hold more than 50% of the voting rights of the target company, approval by the offeree company’s shareholders is still required if the partial offer could result in the offeror and parties acting in concert with it hold 90% or more of the voting rights of the offeree company. Approval by the offeror company’s shareholders is still required if the offeror together with parties acting in concert with it hold 90% or more of the voting rights of the offeree company, failing to comply with the SGX’s rules on minimum free float. The offeror, parties acting in concert with it and their associates are not allowed to vote on the partial offer. Voting should be:-

(i) if a general meeting is convened, by way of a poll on a separate ordinary resolution on the partial offer. The partial offer must be approved by shareholders (present and voting either in person or by proxy) of more than 50% of the votes cast; or
(ii) if it is on the form of acceptance for the partial offer, in a separate box with the number of voting shares indicated. The partial offer must be approved by shareholders of more than 50% of the votes received. Upon the close of the partial offer, the receiving agent must confirm in writing to the Council that it has done the necessary checks and verification to ensure that votes (if any) cast by shareholders not allowed to vote are disregarded and excluded for the purpose of determining shareholders’ approval for the partial offer;

Where approval for a partial offer has been obtained from the offeree company’s shareholders before the partial offer is made, the offeror must announce the offer on the date of the shareholders’ meeting to approve the partial offer;

d) Arrangements are made with the SGX-ST prior to the posting of the offer document to provide a temporary trading counter to trade odd-lots in the offeree company’s shares after the close of the partial offer. Such counter should be open for a reasonable period of time, which in any case should not be shorter than 1 month;

e) The offer document contains a specific and prominent statement to the effect that if the partial offer succeeds, the offeror will be able to exercise statutory control over the offeree company and that the offeror and its concert parties will be free, subject to the 6-month rest mentioned above, to acquire further shares without incurring any obligation to make a general offer;

f) The partial offer is made to all shareholders of the class and arrangements are made for those shareholders who wish to accept in full for the relevant percentage of their holdings. Shares tendered in excess of this percentage should be accepted by the offeror from each shareholder in the same proportion as the number tendered to the extent necessary to enable the offeror to obtain the total number of shares for which he has offered. The offeror should arrange its acceptance procedure to minimise the number of new odd-lot shareholdings;

g) When a partial offer is made for a company with more than one class of equity share capital, a comparable offer is made for each other class;

h) An appropriate partial offer is made for outstanding instruments convertible into, rights to subscribe for, and options in respect of, securities which carry voting rights. In addition, the partial offer to shareholders must be extended to holders of newly issued shares arising from the exercise of such instruments, subscription rights or options during the offer period; and

(i) The precise number of shares, percentage or proportion offered is stated, and the offer may not be declared unconditional as to acceptances unless acceptances are received for not less than that number, percentage or proportion.

Partial offers may, in respect of each class of share capital involved, be in cash or securities or a combination of cash and securities.

Shares represented by acceptances in a partial offer should not be acquired by the offeror prior to expiry of the partial offer. Such shares must be paid for by the offeror as soon as possible following expiry of the partial offer but in any event within 10 days of the partial offer’s expiry date.

Any person who intends to make a partial offer for the same offeree company within 12 months from the date of the close of a previous partial offer (whether successful or not) must seek the Council’s prior consent.

In the case of subsequent offers other than partial offers:-

a) The restrictions in Rule 33.1(a) apply following a partial offer:-

(i) For more than 50% of the voting rights of the offeree company which has not become or been declared unconditional; and

(ii) For less than 30% of the voting rights of the offeree company which has not become or been declared unconditional.

b) The restrictions in Rule 33.1(b) apply following a partial offer for less than 30% of the voting rights of the offeree company which has become or been declared wholly unconditional.
**Conditions**

Generally a partial offer is conditional not only on the number / percentage of acceptances received but also on the approval of shareholders where the offeror and its concert parties hold 50% or less of the voting rights of the offeree.

**Changes wef 1st April 2007**

Wef 1st April, there is greater flexibility through changes in the Code vis-à-vis partial offers.

From 1st April 2007, where the offeror and its concert parties has statutory control (more than 50% of the voting rights) of the offeree, the offeror need not obtain offeree shareholder approval prior to making the partial offer unless the partial offer could result in the offeror and its concert parties holding more than 90% or the offeree company failing to comply with the Securities Exchange’s minimum free float requirement.

Wef 1st April 2007, for partial offers for less than 30% of voting rights in offeree the SIC would normally consent in such situations subject to the following conditions: [1] compliance with Rules 16.4 (d), (f) to (j) and [2] the offeror and its concert parties must not acquire any voting rights during the offer period.

Also, wef 1st April 2007, the offeree of a partial offer of less than 30% of its voting rights is not required to appoint an independent financial adviser to advise its shareholders; thus reducing the regulatory burden.

**Minimum Price**

The minimum price is the highest price paid by the offeror or any of the parties acting in concert with it for shares carrying voting rights in the target during the offer period and within 3 months prior to the commencement of the offer period.

**Subsequent Offers**

In cases of subsequent offers, Rule 33.1 regarding Delay in Subsequent Offers applies.

**Scheme of Arrangement (“SOA”)**

What is a Scheme of Arrangement?

A Scheme of Arrangement is a reorganising of a company’s capital structure or its debts which is binding on creditors and shareholders. It is carried out in accordance with Section 210 of the Companies Act.

There are two types: a creditor’s scheme and a members’ or shareholder’s scheme. A creditors’ scheme is generally used by companies in financial difficulties. A member’s scheme is used to effect corporate reorganisations, including mergers. A scheme of arrangement would involve the Target Company, its shareholders and the Offeror. A scheme of arrangement may provide that all the issued shares in the Target Company are to be cancelled and new shares issued to the Offeror, or it may provide for the transfer of the existing shares to the Offeror. In consideration for the cancellation or transfer of their shares in the Target Company, the shareholders will either receive a cash payment from the Offeror, or receive shares in another company.

**How is an SOA implemented?**

A scheme of arrangement is implemented by means of resolutions passed at meetings of classes of shareholders and, if appropriate, creditors, of the target company convened by the Court. Shareholders connected with the bidder are precluded from attending the meetings, and precluded from voting. If members or members of any class have sufficiently dissimilar rights it may be necessary to hold separate class meetings to approve the scheme.\(^\text{10}\)

But if the scheme of arrangement is approved at the relevant meetings by a majority in number representing three-fourths or 75% in value of the members or class of members voting, the scheme is passed and the Court will proceed to confirm the scheme at subsequent court hearings.

Once the Court’s order has been passed and lodged at the Accounting and Corporate Regulatory Authority (“ACRA”), this has the effect of immediately and compulsorily transferring 100% control of the target company to the bidder.

**To be effective and binding**

a) The scheme must be approved by a majority in number representing 75% in value of the shareholders or creditors, as the case may be, present and voting either in person or by proxy at the meeting convened to approve the scheme;

b) The scheme must be sanctioned by the court; and
A copy of the court order approving the scheme must be lodged with the Registrar of Companies.

Advantages of an SOA

Some advantages of a scheme of arrangement over a takeover bid are as follows:

a) A scheme of arrangement requires the approval of a majority in number representing three-quarters in value of the members or creditors (and of any relevant class of them) who are present and vote either in person or by proxy at the meeting convened by the court for the purpose of approving the scheme. Provided this majority is obtained and the scheme is sanctioned by the court, it then becomes binding on all members of the class and on the company. A substantially lower majority is required under a scheme of arrangement than that which is required to invoke the provisions of section 215 of the Act in a compulsory acquisition; in relation to shareholders outside Singapore, in certain jurisdictions, the circulation of documents offering to acquire or inducing shareholders to dispose of their shares is subject to regulation and other restrictions; depending on the nature of these rules, it may be that a scheme will be less likely to contravene them; and

b) A scheme may result in greater certainty where the objective of the Offeror is to acquire all the shares in the Target Company, especially where the Offeror wants to acquire all the shares or none of them.

Exemptions from Code

All schemes of arrangements are subject to the provisions of the Code. However, the Council may, subject to certain conditions, exempt a scheme of arrangement from the Code’s provisions on:

- Mandatory, voluntary and partial offers,
- When a cash offer is required,
- The appropriate offers to holders of convertibles,
- The requirement to keep offer open for 14 days after it is revised,
- Purchases above the offer price,
- Offer timetable,
- Acceptances and delay before acquisition of voting rights in the scheme company above the offer price.

The Council would normally grant an exemption from the above provisions if:

a) The common substantial shareholders of the scheme companies abstain from voting on the scheme of arrangement;

b) Persons and their concert parties who will as a result of the scheme of arrangement (i) acquire 30% or more or in the scheme company or new entity that holds one or both the scheme companies or (ii) if they together already hold between 30% and 50% of the scheme company’s voting rights, would increase their voting rights by more than 1% in 6 months, abstain from voting on the scheme of arrangement.

c) The scheme document contains advice to the effect that by voting for the scheme, shareholders are agreeing to such persons and their concert parties acquiring effective control in the scheme company without having to make a general offer for the company and discloses the names of such persons, their current voting rights in the scheme company and their voting rights in the scheme company and/or new entity after the scheme of arrangement;

d) The common directors of the scheme companies or the directors who are acting in concert with the persons in (a) or (b) above abstain from making a recommendation on the scheme; and

e) The scheme company which is in effect the Target Company appoints an independent financial adviser to advise its shareholders on the scheme of arrangement.

Non-Exemption from Principles of Code

Schemes of arrangement are not exempted from the General Principles in the Code and provisions such as those in relation to announcements, withdrawal of Offer, frustration of Offer, Directors’ responsibilities, independent advice, release of information, restriction and disclosure of dealings, information to be contained in offer documents, settlement of consideration and proxies.
Compulsory Acquisition of Minority Holdings
Section 215 of the Companies Act

When

Generally, a person who succeeds in acquiring majority control of a company has no power to force minority shareholders to sell their shareholdings to him. However, under some circumstances minority shareholders’ shares may be compulsorily acquired under section 215 of the Act.

How

If an Offeror has, within 4 months of the making of the Offer, obtained approval for the transfer of all the shares in the Target Company to the Offeror from shareholders in the Target Company who hold at least 90% of the shares involved in the transfer (excluding the shares already held at the date of the Offer by, or by a nominee for, the Offeror or its subsidiary), it may by notice, pursuant to section 215 of the Act, require that the dissenting shareholders sell their shares to it on the terms of the Offer. The notice must be sent within 2 months of attaining the 90% assent level.

A shareholder whose shares are being compulsorily acquired may apply to court to have the acquisition stopped. The court will decline to allow the proposed acquisition to proceed only if the applicant can show that the proposed acquisition is unfair or not bona fide.

In the event that an Offeror does not succeed in compulsorily acquiring all the minority shares under section 215, but the remaining shares held by the public nevertheless constitute less than 10% of the total shares in the listed Target Company or are held by less than 500 members of the public, the Target Company must announce that fact. SGX may suspend trading of the securities, pursuant to such announcement. SGX may allow the Target Company a grace period of 3 months or more to raise the percentage of securities held by the public to at least 10% or increase the number of shareholders who are members of the public to 500, failing which SGX may de-list the Target Company.

Delisting

A listed company may also choose to be de-listed by applying to SGX. SGX may agree to de-list the listed company if a resolution to de-list the listed company has been approved, at a general meeting, by a majority of at least 75% in nominal value of the shares held by the shareholders present and voting and such resolution must not have been voted against by 10% or more in nominal value of the shares held by the shareholders present and voting. Before making a decision to de-list the listed company, SGX would also require the listed company to appoint an independent financial advisor to advise on a reasonable exit alternative, which is normally in cash, to be offered to its shareholders and holders of any other classes of listed securities to be de-listed.

Amalgamation

An amalgamation is effected through Sections 215A to 215G of the Companies Act.

This process involves two or more companies amalgamating and / or forming a new company and continuing thereafter as one company.

An amalgamation is to be approved pursuant to Section 215C of the Companies Act in a general meeting and should be registered thereafter with the Registrar of Companies further to Section 215E of the Companies Act.

Reverse Take-over (“RTO”)

In an RTO, the offeror exchanges its shares with the public-listed company. The offeror then makes a take-over offer for the remaining shares in the public company, thereby gaining control of the public-company.
CONSIDERATION

Settlement period

Settlement of consideration of the offer is (wef 1st April 2007) to be within 10 days after the date of expiry of the offer instead of the previous 21 days.

Securities as Consideration

Wef 1st April 2007, there are changes in the rules where shares are acquired in exchange for securities.

Shares acquired in exchange for securities during the offer period or in the 6 months prior to the offer period will be deemed to be purchases for cash unless the securities are required to be held till the offer period expires or the offer consideration has been posted to accepting shareholders.

Where purchases of shares of any class carrying 10% or more of the voting rights have been made by offeror or its concert parties in exchange for securities during the offer period and in the 3 months prior to the offer period, such securities will be required to be offered to all shareholders of that class of shares.

Unless the securities are to be held till the end of the offer period or till the offer consideration has been posted to shareholders, there is also an obligation to provide a cash alternative in this situation.

There is also a need to consult the SIC if 10% or more of the voting rights of the offeree has been acquired during the offer period or in the 6 months prior to the commencement of the offer period and consideration received by vendor of offeree-shares includes shares with selling restrictions.

Generally, the offeror would typically consult the SIC on the basis of valuation of consideration being offered if such consideration is in the form of a cash alternative or securities.

Deal Protection: Break Fees

From 1st April 2007, Offerors are allowed to negotiate break fees with offeree subject to the conditions that the break fee will not exceed 1% of the offer value and the Financial Adviser would need to confirm that the break fee is in the best interest of the offeree company. This applies also to any other favourable arrangement with the offeror even if such arrangements do not involve cash payment.

Notwithstanding the above, there are safeguards in the new Rule 13 to ensure that directors act in good faith when negotiating break fees and that such break fees should not constitute the giving of financial assistance by target to offeror in the acquisition of its shares.

No Frustration of Offer

The code prevents directors of the offeree from frustrating a takeover offer. In the course of an offer, or even before the date of the offer, if the board of the offeree company has reason to believe that a bona fide offer is imminent, the board must not, except pursuant to a contract entered into earlier, take any action, without the approval of shareholders at a general meeting, on the affairs of the offeree company that could effectively result in any bona fide offer being frustrated or the shareholders being denied an opportunity to decide on its merits.

Disclosures and Announcements

During the offer period, the parties to a takeover and their associates are required by the Code to disclose any dealings in the relevant securities to the SGX-ST, SIC and the press.

Dealsings for non-discernment investment clients should be privately disclosed to the SIC.

A company listed on the SGX-ST is required to immediately announce any material information relating to it unless a reasonable person would not expect the information to be disclosed.

Also a target is required under the Code to provide the same information that is given to one offeror to any other bona fide or potential offeror.

Announcements to be made by Offeree Company

Before the board of the offeree company is approached, the responsibility for making an announcement will normally rest with the offeror or potential offeror.

Following an approach to the board of the offeree 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 offeree company. The offeree board should keep a close watch on the offeree company’s share price and volume for signs of undue movement.
The offeree board must make an announcement:

a) When the offeree board receives notification of a firm intention to make an offer from a serious source. Irrespective of whether the offeree board views the offer favourably or otherwise, it must inform its shareholders without delay. The board of the offeree company must issue a paid press notice or, where the offeror has published a paid press notice, an announcement;

b) When, following an approach to the offeree company, the offeree company is the subject of rumour or 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;

c) When negotiations or discussions between the offeror and the offeree company are about to be extended to include more than a very restricted number of people; or

d) When the board of a company is aware that there are negotiations or discussions between a potential offeror and the holder, or holders, of shares carrying 30% or more of the voting rights of a company or when the board of a company is seeking potential offerors, and:-

(i) the company is the subject of rumour or speculation about a possible offer, or there is undue movement in its share price or a significant increase in the volume of share turnover; or

(ii) more than a very restricted number of potential purchasers or offerors are about to be approached.

Substantial Shareholder

Under Section 82 of the Companies Act, a person who is a substantial shareholder must give notice to the company of his interest within 2 days after becoming a substantial shareholder. Any changes in the interest of a substantial shareholder must likewise be notified within 2 days (see section 83 of the Companies Act).

Section 137 of the SFA requires a substantial shareholder to make the same disclosures to the SGX.

Under section 81 of the Companies Act, a “substantial shareholder” is a person who has an interest or interests in one or more voting shares in the company and the nominal amount of that share, or the aggregate of the nominal amounts of those shares, is not less than 5% of the aggregate of the nominal amount of all the voting shares in the company.

Under Appendix 7.1 of the Listing Manual, a listed issuer is required to release immediately after receipt any notice of substantial shareholding or notice of changes thereof. The notice should contain the following particulars:

a) Name of substantial shareholder;

b) Date of notice to issuer;

c) Date of transaction;

d) Name of registered holder;

e) Particulars of interest and circumstances giving rise to the interest /change;

f) The number of shares which are subject of the transaction, and the figure as a percentage of the issuer’s issued share capital;

g) The amount of consideration (excluding brokerage and stamp duties) per share paid or received; and

h) The number of shares held before and after the transaction, and the figure as a percentage of the listed issuer’s issued share capital.

Dealings in Shares of Offeror and Target

Rule 12 of the Code provides for disclosure of dealings in the shares of the Offeror and the Target Company during the offer period. Generally, parties to a take-over or merger transaction and their associates are free to deal in shares of the Offeror or the Target Company, for their own account, provided they make the relevant disclosures required under Rule 12 to SGX, the Council and the press, and subject to compliance with the laws relating to insider dealing. Such disclosures must be made by noon on the next dealing day.
Offeror Disclosure Requirements

As soon as the Offeror has a firm intention to make a take-over offer must be publicly announced by the Offeror in the newspapers.

The public announcement by the Offeror must disclose:

a) The terms of the Offer;

b) The identity of the Offeror (and where applicable, the identity of the ultimate offeror or ultimate controlling shareholder of the Offeror);

c) Details of any existing holding of securities (i) being offered for or (ii) convertible into those which are being offered for securities in the Target Company which the Offeror or any person acting in concert with him owns or controls or in respect of which the Offeror or any person acting in concert with him has received an irrevocable commitment to accept the Offer;

d) All conditions to which the Offer is subject;

e) Details of any arrangement in relation to shares of the Offeror or Target Company which might be material to the Offer; and

f) In the case of a mandatory offer or a voluntary offer in cash or with a cash element, the announcement must include an unconditional confirmation by the Offeror’s financial adviser, or another appropriate third party, that financial resources are available to the Offeror to satisfy full acceptance of the Offer.

The Offer Document which must be despatched by, or on behalf of, the Offeror to the Target Company must include, inter alia, the following:

1) The Offeror’s intentions regarding the business of the Target Company;

2) The Offeror’s intentions regarding any major changes to be introduced in that business, including any redeployment of fixed assets of the Target Company;

3) The long-term commercial justification of the Offer;

4) Its intention with regard to continued employment of employees of the Target Company and its subsidiaries;

5) The shareholdings of the Offeror in the Target Company;

6) If the Offeror has dealt in the shares of the Target Company during the period 6 months prior to the beginning of the Offer Period and ending with the latest practicable date prior to the posting of the Offer Document, details, including dates and prices of such dealings and if no such dealings were made, a statement to that effect;

7) The names, descriptions and addresses of all the Offeror’s directors;

8) A summary of its principal activities;

9) Details for the last 3 financial years of turnover, exceptional items, net profit or loss before and after tax, minority interests, net earnings per share, net dividends per share together with a statement of assets and liabilities shown in the last published audited accounts;

10) Particulars of all publicly known material changes in the financial position of the company subsequent to the last published audited accounts or a statement that there are no such publicly known material changes;

11) Appropriate details from any interim statement on preliminary announcement made since the last published audited accounts;

12) Significant accounting policies together with any points from the notes of the accounts which are of major relevance for the interpretation of accounts;

13) 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;

14) Whether or not there has been, within the knowledge of the Offeror, any material change in the financial position or prospects of the Target Company since the date the last balance sheet was laid before the company and if so, particulars of any such change;
15) Where the Offeror is a subsidiary, the ultimate holding company will normally have to disclose the prescribed information on a consolidated basis in the offer document. The Council may dispense with this requirement if the subsidiary in question is of sufficient substance in relation to the group and the offer;

16) The price or other considerations to be paid for the Target Company’s securities;

17) All conditions attached to acceptances, and in particular whether the Offer is conditional upon acceptances being received in respect of a minimum number of securities or percentage of shares, and if so, that number of securities or percentage of shares and the last day on which the Offer can become unconditional;

18) A statement whether or not the Offeror intends to avail itself of the powers of compulsory acquisition;

19) A statement as to whether there is any agreement, arrangement or understanding between the Offeror or any person acting in concert with it, and any of the directors or recent directors or shareholders or recent shareholders of the Target Company, having any connection with or dependence upon the Offer, and full particulars of any such agreement, arrangement or understanding;

20) A statement as to whether any securities acquired pursuant to the Offer will be transferred to any other person, and the names of the parties to any such agreement, arrangement or understanding together with the particulars of all securities in the Target Company held by such persons, or a statement that no such securities are held, and particulars of all securities which will or may be transferred;

21) A statement on whether and in what manner the total emoluments of the directors of the Offeror will be varied in consequence of the acquisition of the Target Company or in any associated relevant transaction;

22) Where the Offer is for cash or includes an element of cash, an unconditional confirmation by the Offeror’s financial adviser, or another appropriate third party, that financial resources are available to the Offeror to satisfy full acceptance of the Offer must be included;

23) A statement as to whether or not any securities acquired pursuant to the Offer will be transferred to any other persons, together with the names of the parties to any such agreement, arrangement or understanding and particulars of all securities in the Target Company held by such persons, or a statement that no such securities are held;

24) The closing price on the SGX of the securities of the Target Company which are subject of the Offer on the latest practicable date prior to the publication of the Offer Document, on the latest business day immediately preceding the date of the initial announcement of the Offer and at the end of each 6 calendar months preceding the date of the initial announcement;

25) The highest and lowest closing prices during the period between the start of the 6 months preceding the date of the initial announcement and the latest practicable date prior to the posting of the Offer Document and the respective dates of the relevant sales; and

26) Details of the securities for which the offer is made and a statement whether they are to be acquired cum or ex any dividend or other distribution which has been or may be declared.

Where the transaction involves an exchange of securities, the Offer Document must, in addition to providing for the above, contain the following:

(a) The nature and particulars of the Offeror’s business;

(b) The date and country of the Offeror’s incorporation;

(c) The address of its principal office in Singapore;

(d) The authorised and issued share capital and the rights of the Offeror’s shareholders in respect of capital, dividends and voting;
(e) Whether the shares offered will rank pari passu with the existing issued shares of the Offeror, and if not, a precise description of how the shares will rank for dividends and capital;

(f) The number of shares issued since the end of the last financial year of the Offeror;

(g) Where the Offeror’s securities are quoted or dealt in or on a stock exchange, this fact should be stated. The following information should also be included:

(i) The closing price on the latest practicable date prior to the publication of the Offer Document;

(ii) Where the Offer was publicly announced the closing price on the latest business day immediately preceding the date of the initial announcement of the Offer;

(iii) The closing price at the end of each of the 6 calendar months preceding the date of the initial announcement; and

(iv) The highest and lowest closing prices during the period between the start of 6 months preceding the date of the initial announcement and the latest practicable date prior to the posting of the Offer Document and the respective dates of the relevant sales;

(h) Where the Offeror’s securities are not quoted or dealt in on a stock exchange, the statement should contain all information which the Offeror may have as to the number, amount and price at which the securities may have been sold during the period between the start of the 6 months immediately preceding the date of the initial announcement and the latest practicable date prior to the publication of the Offer Document and if the Offeror has no such information, a statement to that effect should be made;

(i) Details of the outstanding securities convertible, into rights to subscribe for and options in respect of securities which carry voting rights affecting shares in the Offeror;

(j) Details of any reorganisation of capital during the 3 financial years preceding the date of the Offer;

(k) Details of any bank overdrafts or loans, or any other similar indebtedness, mortgages, charges or guarantees or other material contingent liabilities of the Offeror and any of its subsidiaries, or, if there are no such liabilities a statement to that effect;

(l) Details of any material litigation to which the Offeror is, or may become, a party;

(m) Details of every material contract to which entered into with an interested person not more than 3 years before the date of the Offer, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the Offeror;

(n) How and when the documents of title to the securities will be issued;

(o) The shareholdings in the Offeror and in the Target Company in which directors of the Offeror are interested;

(p) The shareholdings in the Offeror and in the Target Company which any person acting in concert with the Offeror owns or controls (with the names of such persons acting in concert);

(q) The shareholdings in the Offeror and in the Target Company owned or controlled by any persons who, prior to the posting of the Offer document, have irrevocably committed themselves to accept the Offer together with the names of such persons; and

(r) The shareholdings in the Offeror and the Target Company owned or controlled by a person with whom the Offeror or any person acting in concert with the Offeror has any indemnity or option arrangements or any agreement or understanding, formal or informal, of whatever nature relating to the relevant securities which may be an inducement to deal or refrain from dealing;
### SPECIMEN TIME TABLE FOR A TAKE-OVER OFFER

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>D-21</td>
<td>Public announcement of Offer by Offeror.</td>
</tr>
<tr>
<td></td>
<td>Holding announcement by Target Company of Offer.</td>
</tr>
<tr>
<td>D (&quot;D day&quot;)</td>
<td>Offeror to despatch the Offer Document to the Target Company.</td>
</tr>
<tr>
<td></td>
<td>Copy of the Offer Document to be lodged with the Council and SGX on the same day.</td>
</tr>
<tr>
<td>D+14</td>
<td>Target Company to send the Offeree Circular containing the recommendation of the independent directors and the advice of the independent financial advisers of the Target Company.</td>
</tr>
<tr>
<td></td>
<td>The Offeree Circular must be lodged with the Council and SGX (if the Target Company is a listed company) on the date of despatch.</td>
</tr>
<tr>
<td>D+28</td>
<td>The closing date of the Offer will be as stated in the Offer Document, but the Offer must initially be open for at least 28 days after the despatch of the Offer Document.</td>
</tr>
<tr>
<td>By 8.00 a.m. on D+29</td>
<td>Announcement of level of acceptances.</td>
</tr>
<tr>
<td>D+42</td>
<td>First date offer can close if declared unconditional as to acceptances on Day 28.</td>
</tr>
<tr>
<td>D+46</td>
<td>Last day for revised offer</td>
</tr>
<tr>
<td>D+49</td>
<td>Right of withdrawal arises (assuming first closing date is Day 28) if offer not unconditional as to acceptances</td>
</tr>
<tr>
<td>D+60</td>
<td>Last day for offer to become or be declared unconditional as to acceptance</td>
</tr>
<tr>
<td>D+81</td>
<td>Last day for fulfillment of other conditions if offer unconditional as to acceptances on Day 60</td>
</tr>
<tr>
<td>D+91</td>
<td>Last day for settlement of consideration</td>
</tr>
<tr>
<td>D+4 months</td>
<td>Final date for acquiring 90% in order to commence compulsory acquisition procedures</td>
</tr>
</tbody>
</table>

**Footnote**

1. Although w.e.f. 1st April 2007, the Code has been revised to allow the SIC to waive its application to in relation to (i) Singapore-incorporated companies or Singapore-registered business trusts with a primary listing overseas; and (ii) unlisted public companies and unlisted registered business trusts with more than 50 shareholders or unit holders, as the case may be, and more than $55 million of net tangible assets. Such discretion allows SIC to waive the Singapore Code where the costs of compliance outweigh the benefits.

2. W.e.f. 1st April 2007, the Code has been revised to limit the application of the Singapore Code with respect to foreign-incorporated companies and foreign-registered trusts to only those with a primary listing in Singapore. This provides certainty to the market on the take-over regulations that potential offerors need to comply with 3. Refer.

3. Refer to footnote 1 “Independent vote” is defined in the Code to mean a vote by shareholders who are not involved in, or interested in, the transaction in question.

4. Refer to Note 1 in the Notes on Dispensation from Rule 14 for the situations in which waivers pursuant to this exception will not normally be granted.

5. A waiver will not be granted if at the time the security was given the lender had reason to believe that foreclosure was likely. Additionally, following foreclosure, any purchaser from the lender who crosses the take-over threshold will also be subject to the mandatory take-over obligation.

6. Refer to Note 3 in the Notes on Dispensation from Rule 14 for the conditions which apply to waivers which are granted pursuant to this exception. The obligation will arise after the Company has bought back the relevant number of shares, in the case where the exemption is not granted, or in the case where an exemption that is granted is subsequently invalidated.

7. However, if a prospective Offeror wishes to gain effective control and anticipates that it will encounter some resistance to its Offer, it may consider acquiring a controlling block either by private treaty or by market purchases and then proceeding to make a mandatory bid rather than by proceeding at the outset to make a voluntary bid. If the Offeror intends to exercise compulsory purchase rights under section 215 of the Act the chances of attaining the 90% acceptance level necessary for that purpose will be increased if instead of purchasing a controlling block and then making a mandatory bid, it obtains an irrevocable undertaking to accept from the holder of the controlling block and then makes a voluntary bid.

8. Members with sufficiently dissimilar rights would themselves constitute a separate class.
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