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 revision to The Singapore Code on Take-overs and Mergers ("Code") effective on 25 March 2016 ("2016 amendments").

There were amendments to the Companies Act, governing the compulsory acquisition mechanism that came into effect on 3 January 2016 ("Companies Act Amendments").

This memorandum states the position under the laws, regulations and rules as on July 2016.

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. This guide should not be relied on as legal advice.
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.

The Singapore Code on Take-overs and Mergers

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

The body which administers and enforces the provisions of the Code is the Securities Industry Council (“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. General Principle 6: 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;

b. General Principle 2: 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. They must therefore accept that there are limitations on the manner in which those interests can be pursued in a take-over situation;

c. General Principle 3: an offeror must treat all shareholders of the same class in a target company 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. General Principle 10: 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;

e. General Principle 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; and

f. General Principle 11: 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.

Application

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

- Corporations (whether or not incorporated in Singapore) with a primary listing of their shares in Singapore
- Business trusts with a primary listing of their units in Singapore
- Real Estate Investment Trusts (“REITs”) under the Securities and Futures Act (SFA)
- Unlisted Singapore incorporated public companies with more than 50 shareholders and net tangible assets of $5 million or more
- Unlisted registered business trusts with more than 50 unitholders and net tangible assets of $5 million or more

The terms “business trust” and “registered business trust” have the same meanings attributed to such terms by Section 2 of the Business Trust Act (Cap. 31A). 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 Council to issue a private reprimand or public censure or further action as the Council thinks fit, including one designed to deprive an offender of the benefits of the capital markets. In the case of advisers, the Council may also require such advisers to abstain from taking on Code-related work for a stated period. If the Council finds evidence to show that a criminal offence has taken place whether under the Companies Act, the SFA or under the criminal law, it will refer the matter to the appropriate authority.

The Council may also require an offender to pay to the holders of securities of the offeree company a just and reasonable amount to ensure the holders receive what they would have been entitled to if a relevant Rule had
been complied with. In addition, the Council may also make a ruling requiring simple or compound interest to be paid at a rate and for a period determined by the Council until full payment is made.

The 2016 Amendments

The 2016 amendments to the Code came into effect on 25 March 2016.

In summary, the key amendments in the 2016 amendments are as follows:

1. clarifying that the offer timetables will be aligned to that of the latest offer, where there are competing offers in the new Note on Rule 22.9;
2. prescribing a default auction procedure, if neither offeror has declared its final offer price in the later stages of the offer period in the new Rule 20.5;
3. extending the deadline for a potential competing offeror to announce the making of a competing offer in the new Note 6 on Rules 3.1, 3.2 and 3.3;
4. clarifying that soliciting a competing offer or running a sale process does not amount to frustration of the existing offer and that SIC should be consulted in cases of doubt in the new Note 8 on Rule 5;
5. clarifying that an offeree board can consider sharing available management projections and forecasts with the independent financial adviser in the new Note 5 on Rule 7.1;
6. requiring earlier disclosure of any material change to information previously published in an offer in order to ensure that shareholders and investors are apprised of material information on a timely basis in Note 1 on Rule 8.1;
7. adopting a 7 business day settlement period instead of the previous 10 calendar day settlement period as reflected from the amended Rules 16.6 and 30;
8. codifying and streamlining the standards required of pre-conditions in a pre-conditional voluntary offer in the new Note 5 on Rule 15.1;
9. permitting the offeree company to post the offer document at an earlier date in a pre-conditional offer in the new Note on Rule 22.1 of the Code; and
10. clarifying how the offer value for a different class of shares (e.g. preference shares) should be calculated in the new Note 1 on Rule 18 of the Code.

Securities and Futures Act (Cap. 289) (the “SFA”)

Part VIII of the SFA (Securities Industry Council and Take-over Offers) 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 fulfil the relevant terms and conditions once the take-over offer is being accepted.

Application

Section 139 of the SFA (Take-over Code) 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 unincorporated, whether incorporated or carrying on business in Singapore or not, and shall extend to acts done outside Singapore.”

Part VIII of the SFA (Securities Industry Council and Take-over Offers) applies to all offerors regardless whether they are incorporated or carrying on businesses in Singapore or are foreigners or Singapore citizens.

The SFA governs the disclosure requirements on the part of substantial shareholders of listed companies on the Singapore Exchange Securities Trading Limited (“SGX-ST”).

Section 135 SFA (Duty of substantial shareholder to notify the incorporation of his interests)

Anyone (i.e. including a body corporate) who acquires an interest or interests in one or more voting shares (excluding treasury shares) in a Singapore company whose shares are listed on the SGX-ST or a foreign company whose shares have a primary listing on the SGX-ST and where the total votes attached to that shares or shares is not less than 5% of the total votes attached to all voting shares (excluding treasury shares), must notify such company of his interests.
interest within 2 business days after becoming aware that he is a substantial shareholder. 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 voting shares of that class.

Section 136 SFA (Duty of substantial shareholder to notify corporation of change in interests)

The SFA also imposes a continuing obligation on a substantial shareholder to give written notification to the company of subsequent changes (subject to the percentage threshold set out in Section 136 of the SFA) to the interest or interests of a substantial shareholder. The notice must be given within 2 business days after the substantial shareholder becomes aware of such a change.

However, exemption regulations promulgated under the SFA exempt certain persons from the entire Part VII of the SFA (which governs disclosure and notification obligations, and which contains Sections 135 and 136 SFA referred to above).

Such exemption applies to any offeror (as well as to any person deemed to have an interest in the shares held by the offeror) who has announced an offer (which is governed by the Code) for a listed company in respect of any change in the offeror’s interest after the offer announcement and before the offer lapses, closes or is withdrawn provided such change results from acceptances received pursuant to the offer that comply with the provisions of the Code or any other acquisition or disposal made by offeror and provided the relevant disclosure requirements under the Code on such acquisition or disposal are complied with.

Companies Act (Cap. 50)

Sections 210, 212, 215, 215A

The Companies Act provides the framework for schemes of arrangement (Sections 210, 212) and amalgamations (Sections 215A to 215K) 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.

Listing Manual

The Listing Manual applies where the acquiring company or the target company is listed on the SGX-ST.

Chapter 9 (Interested Person Transactions) states requirements to be met in relation to interested person transactions (“IPTs”).

Chapter 10 (Acquisitions and Realisations) primarily lists varying levels of obligations needed to be complied with by a company listed on the SGX-ST, depending on which materiality thresholds set out within are crossed by the transaction proposed to be undertaken by the company (e.g. discloseable transactions, major transactions, very substantial acquisitions and reverse takeovers).

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

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

- Acquisitions and realisations in Rule 704 (Announcement of Specific Information).
- IPTs in Rules 905 and 906 (General Requirements).
- Discloseable transactions, major transactions or very substantial acquisitions or reverse take-overs in Chapter 10 (Acquisitions and Realisations).

Competition Act (Cap. 50B)

The Competition Act prohibits mergers that result in a substantial alleviation of competition within any market for goods or services in Singapore. 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 Competition 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 and Singapore Mercantile Exchange Pte Ltd)
- Clearing houses: The Central Depository Pte Ltd, the Singapore Exchange Derivatives Clearing Limited and Singapore Mercantile Exchange Clearing Corporation Pte Ltd
- Holding company of an approved exchange or a designated clearing house namely the Singapore Exchange

Mandatory offers under Rule 14 and voluntary offers under Rule 15 of the Code may, where appropriate, be required to contain the terms set out in Appendix 3 of the Code, which provides a guidance note on the merger procedures of the CCS (the “Guidance Note on Mergers”). Where such offers under the Code fall within the ambit of the merger provisions of the Competition Act, the parties to the take-over will need to comply with the requirements under both the Code and the Competition Act.¹

**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. 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. Under the Code, securities of the offeree company include convertible securities, warrants, options and derivatives.

Rule 11.1 (Restrictions on dealings before the offer) of the Code and Sections 218 (Prohibited conduct by connected person in possession of inside information) and 219 (Prohibited conduct by other persons in possession of inside information) of the SFA restrict dealing by persons in possession of confidential price sensitive information.

Sections 221 (Penalties) and 232 (Civil penalty) 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 Section 198 (Securities market manipulation) of 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 as such 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.

**(A) 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.

There is a presumption where shareholders who requisition or threaten to requisition the consideration of a board control-seeking proposal at a shareholders’ meeting, together with their supporters at the date of the requisition or threat, act in concert with each other as well as with the proposed new directors. The key to whether such a presumption arises is whether the proposal is seen to be board control-seeking (Note 3 on Rule 14.1 sets out the factors relevant in determining whether a proposal is board control-seeking). Subsequent acquisitions of interests in shares by any concert party could trigger a general offer obligation under Rule 14 of the Code.

Rule 14 clarifies that any person who has acquired or written an option on existing shares or derivative on existing shares which causes him to have a long economic exposure, whether absolute or conditional, to changes in the price of shares, will normally be treated as equivalent to having acquired those shares for the purpose of Rule 14. A person is regarded as having a long economic exposure to changes in the price of shares if he benefits economically from the price increase or suffers economically from the price decrease. Where there are such proposed transactions involving convertibles, prior consultation with the Council should be undertaken to determine if this default rule would not apply.

a) Issues of new securities:

(i) where 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 there is an independent vote at a shareholders’ meeting approving the issue of the securities.

(ii) 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 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 hold 50% or less of the voting rights in the target company, places 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.

Appendix 2 (Share buy-back guidance note) of the Code sets out briefly the procedure and conditions on which an exemption from the requirements of Rule 14 are 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.

Furthermore, there is a class exemption in the case of a listed company, for its directors and persons acting in concert with them, for situa-
tions of share buy-back, from Rule 14 where Rule 14.1 shareholding thresholds are crossed as a result of a reduced share base brought about by share buy-backs. There is an additional reporting requirement in that, within seven days of shareholders approving of the share buy-back mandate, each of the directors of the company (for which the shareholders’ mandate for share buy-back has been obtained) has to submit to the Council a duly signed form as prescribed by the Council.

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

a) 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.

b) 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 Buy-backs

Where a company buys back its shares, Appendix 2 of the Code 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 offeror’s shareholders and any foreign regulatory authority).

The Council’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.

Chain Principle

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:

- assets;
- market capitalisation (where the first and second companies are listed);
- sales; or
- earnings.

The “relevant price” depends on when the mandatory offer is triggered; within 3 months from 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 Note 5 (Conditional agreement and put and call option) of the Notes on Rule 14.3 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-ST approval, the offeror should consult the Council on any other conditions it wishes to impose.

Generally, the fulfilment 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 Council’s consent. Where appropriate, a voluntary offer must contain the terms set out in Appendix 3 (Guidance note on the merger procedures of the Competition Commission of Singapore) of the Code.

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.

**Pre-conditional voluntary offer**

With the 2016 amendments, the offeror may announce a pre-conditional voluntary offer where the announcement of a firm intention to make an offer is subject to the fulfilment of certain pre-conditions. These pre-conditions are subject to the following:

a. the pre-conditions should be stated clearly in the announcement of the pre-conditional offer;

b. the pre-conditions should be objective and reasonable;

c. the announcement of the pre-conditional offer must specify a reasonable period for fulfilment of the pre-conditions, failing which the offer will lapse; and

d. no pre-condition should be relied upon to cause the offer to lapse unless:
   - the offeror has demonstrated reasonable efforts to fulfil the conditions within the specified time period; and
   - the circumstances that give rise to the right to rely upon the conditions are material in the context of the proposed transaction.

**(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 Council 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 Council 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 offeree 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. The 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 offeree 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 holding more than 90%, or the offeree company failing to comply with the SGX-ST’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 offeror and its concert parties hold 50% or less of the voting rights of the offeree.
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 applies with regard to Delay in Subsequent Offers.

(B) 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 of schemes: a creditors’ scheme and a members’ or shareholders’ scheme. A creditors’ scheme is generally used by companies in financial difficulties. A members’ 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 an SOA is 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.

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

(c) 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 Companies 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 the following:

- 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) 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.

With the 2016 amendments, in the case of a scheme of arrangement, the deadline for a potential competing offeror who must announce its intentions to either make an offer or no bid has been revised from the 50th Day to 53rd Day, from the date the first offeror dispatches its initial offer document.

(C) 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 Companies 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 Companies 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-ST may suspend trading of the securities, pursuant to such announcement. SGX-ST 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-ST may de-list the target company.

**Delisting**

A listed company may also choose to be de-listed by applying to SGX-ST. SGX-ST 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-ST 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.

**(D) 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.

With the 2016 amendments, in the case of an amalgamation, the deadline for a potential competing offeror who must announce its intentions to either make an offer or no bid has been revised from the 50th Day to 53rd Day, from the date the first offeror despatches its initial offer document.

**(E) Reverse Take-over ("RTO")**

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

**CONSIDERATION**

**Settlement period**

With the 2016 amendments, settlement of consideration of the offer is to be within 7 business days after the date of expiry of the offer instead of the previous 10 calendar days.

**Securities as Consideration**

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 Council 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 Council on the basis on valuation of consideration being offered if such consideration is on the form of a cash alternative or securities.

**Deal Protection: Break Fees**

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 Rule 13 of the Code 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.

In the case of an offeree registered business trust or business trust, by the trustee-manager and/or the directors of the trustee-manager, and in the case of an offeree REIT, no frustrating action by the manager and/or any of the directors of the manager of the REIT and/or the trustee of the REIT (in its capacity as trustee of such offeree REIT). Certain matters have also been spelt out as prohibited action unless carried out with the prior approval of unitholders and these actions include the alteration of terms of engagement between the business trust and the trustee-manager or the offeree REIT and its manager.

However, with the 2016 amendments, there is now clarification that (i) soliciting a competing offer or running a sale process does not amount to frustration of an existing offer and (ii) directors of the offeree company may consider sharing available management projections and forecasts with the independent financial adviser.

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, the Council and the press.

Dealings in securities are extended to dealings in derivatives.

It is clear that the taking, granting, acquisition, disposal, exercising (by either party), lapsing, closing out or variation of an option, whether in respect of new or existing securities, and the acquisition of, disposal of, entering into, closing out, exercise (by either party) of any rights under, or issue or variation of, a derivative will be regarded as a dealing in relevant securities.

Dealings for non-discretionary investment clients should be privately disclosed to the Council.

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.

With the 2016 amendments, there needs to be prompt disclosure of (i) any material change to information previously published in connection with an offer; and (ii) any material new information which would have been required to be disclosed in any previous document or announcement published during an offer period. In any cases of doubt, the SIC should be consulted.

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 135 of the SFA, a person who is a substantial shareholder must give notice in a MAS-prescribed notification form to the company of his interest within 2 business days after becoming aware of his becoming a substantial shareholder. Any changes in the interest of a substantial shareholder must likewise be notified in a prescribed notification form within 2 business days (see Section 136 of the SFA).

Under Section 2 of the SFA, a “substantial shareholder” is a person who has an interest or interests in one or more voting shares (excluding treasury shares) in the company and the total votes attached to that share or those shares is not less than 5% of the total votes attached to all the voting shares (excluding treasury shares) in the company.

All notification requirements in respect of interests in listed companies have been consolidated in the SFA. A listed issuer is required to disseminate on SGXNET all MAS-prescribed notifications received from substantial shareholders and directors as soon as possible and not later than the end of the following business day. Substantial shareholders and directors are no longer required to separately report their interests, and changes in interests, in securities to the SGX-ST.

The MAS prescribed form provides for information such as name of substantial shareholder or director, reason for notification, date of change, date of becoming aware of change, number of securities the subject of change, consideration, circumstances of change, and the shareholding situation before and after change, to be disclosed.

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-ST, 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 which are being offered for or which carry voting rights, or convertible securities, warrants, options or derivatives in respect of securities which are being offered for or which carry voting rights in the offeree 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.

There is a requirement for disclosure in the offer announcement the number and percentage of any relevant securities in the offeree company which the offeror or any person acting in concert with it has:-
(a) granted a security interest to another person, whether through a charge, pledge or otherwise;

(b) borrowed from another person (excluding borrowed securities which have been on-lent or sold); or

(c) lent to another person.

The offer document which must be dispatched by, or on behalf of, the offeror to shareholders of 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 for the offer;

(4) Its intentions with regard to continued employment of employees of the target company and its subsidiaries;

(5) The shareholdings of the offeror in the target company;

The definition of shareholdings for disclosure purposes includes derivatives (apart from convertible securities, warrants and options which already required disclosure previously). Where any shareholdings have been made the subject of a security interest, whether through a charge, pledge or otherwise, or borrowed from another person (excluding borrowed shares which have been on-lent or sold) or lent to another person, such disclosures must also be made.

(6) If the offeror has dealt in the shareholdings 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) Similar details from any interim statement on preliminary announcement made since the last published audited accounts, as with the 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 of the last balance sheet laid before the company in general meeting 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 re-
cent 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) Except in the case of an offeror offering solely cash, 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-ST 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 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 con-
vertible, into rights to subscribe for and op-
tions in respect of securities which carry
voting rights affecting shares in the offeror;

(j) Details of any reorganisation of capital dur-
ing 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 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 (in the case
of a securities exchange offer only) and in
the target company in which directors of
the offeror are interested;

(p) The shareholdings in the offeror (in the case
of a securities exchange offer only) and in
the target company which any person act-
ing in concert with the Offeror owns or con-
trols (with the names of such persons acting
in concert);

(q) The shareholdings in the offeror (in the case
of a securities exchange offer only) and in
the target company owned or controlled
by any persons who, prior to the posting of
the offer document, have irrevocably com-
mitted themselves to accept the offer to-
gether with the names of such persons; and

(r) The shareholdings in the offeror (in the case
of a securities exchange offer only) 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>D-21</td>
<td>Holding announcement by target company of Offer.</td>
</tr>
<tr>
<td>D (“D day”)</td>
<td>Offeror to dispatch the Offer Document to the target company. Copy of the Offer Document to be lodged with the Council and SGX-ST (if the Target Company is a listed company) 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 to the shareholders of the target company. The offeree circular must be lodged with the Council and SGX-ST on the date of dispatch.</td>
</tr>
<tr>
<td>D+28</td>
<td>First closing date: 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 dispatch 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+39</td>
<td>Last date that target company can announce material new information (results, etc).</td>
</tr>
<tr>
<td>D+42</td>
<td>Acceptances may be withdrawn if offer still unconditional as to acceptances.</td>
</tr>
<tr>
<td>D+46</td>
<td>Last day for revised offer.</td>
</tr>
<tr>
<td>D+60</td>
<td>Last day for offer to become or be declared unconditional as to acceptances, failing which the offer will lapse.</td>
</tr>
<tr>
<td>D+74</td>
<td>Earliest date on which offer can close (assuming offer became unconditional as to acceptances on Day 60).</td>
</tr>
<tr>
<td>D+81</td>
<td>Last day for fulfillment of other conditions if offer unconditional as to acceptances on Day 60, failing which the offer will lapse.</td>
</tr>
<tr>
<td>D+4 months</td>
<td>Final date for acquiring 90% of the offer shares under section 215(1) Companies Act to commence compulsory acquisition procedures.</td>
</tr>
<tr>
<td>D+6 months</td>
<td>Final date for compulsory acquisition notices under section 215 (1) Companies Act.</td>
</tr>
</tbody>
</table>

### Endnotes

1. Appendix 3 paragraph 1
2. Refer to Note 1 (Vote of independent shareholder on the issue of new securities “Whitewash”) of the Notes on dispensation from Rule 14 defines “Independent vote” to mean a vote by shareholders who are not involved in, or interested in, the transaction in question.
3. Refer to Note 1 (Vote of independent shareholder on the issue of new securities “Whitewash”) in the Notes on dispensation from Rule 14 for the situations in which waivers pursuant to this exception will not normally be granted.
4. Refer to Note 2 (Enforcement or foreclosure of security for a loan, receivers, etc.) in the Notes on dispensation from Rule 14 for the conditions which apply to waivers which are granted pursuant to this exception. 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 offer obligation.
5. 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.
COMPETING OFFERS

With the 2016 amendments, there is now greater certainty on the applicable procedures and timelines where there are competing offers. In cases of competing offers, all existing offers will be bound by the timetable established by despatch of the offer document of the latest competing offeror. For a contractual offer, the deadline for a potential competing offeror who must announce its intentions to either make an offer or no bid has since been revised from the 50th Day to the 53rd Day from the date the first offeror despatches its initial offer document.

Where there are competing offers and if neither offeror has declared its final offer price till the 46th day following the posting of the offer document, an auction procedure will be prescribed. After the end of the auction procedure at 5.00pm on any of the Auction Days 1 to 5, SIC will make an announcement confirming that the auction procedure has ended.

Competing offerors are usually required to post their revised offer documents no later than 7 days after the end of the auction. The SIC may also dispense with the requirement for a competing offeror to post its revised offer document, if it is clear that the value of the competing offeror’s offer is lower than the value of the other competing offeror’s offer. The latest date in which either offer made by the competing offerors may become or be declared unconditional as to acceptances will be 14 days after the posting of the revised offer documents.

**SPECIMEN TIME TABLE FOR A TAKE-OVER OFFER IN COMPETITIVE SITUATIONS**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
</table>
| D+46  | Last day for revised offer:  
If a competitive offer continues to exist at 5.00pm on Day 46 and no alternative procedure has been agreed between the competing offerors, the board of the offeree company and the Council, the competing offeror may announce a revised offer only in accordance with the Auction Procedure. |
| D+47  | Auction Day 1:  
Auction procedure commences and both offerors can announce a revised offer in 1st round. Revised offers announced in this round must be unconditional.  
If no competing offeror announces a revised offer on Auction Day 1, the auction procedure will end at 5.00pm on this day. |
| D+48  | Auction Day 2:  
A competing offeror may announce a revised offer on Auction Day 2, if the other competing offeror announced a revised offer on Auction Day 1.  
If no such revised offer is announced, the auction procedure will end at 5.00pm on this day. |
| D+49  | Auction Day 3:  
A competing offeror may announce a revised offer on Auction Day 3, if the other competing offeror announced a revised offer on Auction Day 2.  
If no such revised offer is announced, the auction procedure will end at 5.00pm on this day. |
| D+50  | Auction Day 4:  
A competing offeror may announce a revised offer on Auction Day 4, if the other competing offeror announced a revised offer on Auction Day 3.  
If no such revised offer is announced, the auction procedure will end at 5.00pm on this day. |
| D+51  | Auction Day 5:  
If a competing offeror permitted to announce a revised offer on Auction Day 4 does so, either or both of the competing offerors may announce a revised offer on Auction Day 5. In any event, the auction procedure will end at 5.00pm on Auction Day 5. |
| D+58  | Last day for competing offerors to post revised offer documents (assuming last day of auction was Auction Day 5) |
| D+72  | Last day for offer to become or be declared unconditional as to acceptances |
The successful conclusion to the takeover of Fraser & Neave Limited ("F&N") in early 2013, by Thai group TCC Assets, facing off an earlier competitive bid from a consortium led by property developer Overseas Union Enterprise ("OUE"), merits special mention, given the unusual features in the bids.

TCC Assets announced a mandatory offer on 13 September 2012 at $8.88 per F&N share, which closing date was extended multiple times. Prior to the close of the TCC $8.88 offer, the offeror in the OUE-led bid, OUE Baytown announced a voluntary offer on 15 November 2012 at $9.08 per F&N share. The OUE offer had 2 special features. The first special feature was that a third party, Kirin Holdings Company, Limited ("Kirin"), which held a 14.8% interest in F&N at the time of the OUE offer announcement, had provided an undertaking to OUE Baytown that it would accept the OUE offer, and would not accept any competing offer. Kirin had also provided an undertaking to OUE Baytown that it would make a binding offer to F&N to acquire the food and beverage business of the F&N group ("F&B Business"), at a price of S$2.7 billion and on other terms pre-agreed between Kirin and the OUE Baytown. The Kirin F&B Offer shall be capable of acceptance by F&N upon the OUE Offer becoming unconditional.

OUE Baytown, on its part, had undertaken to Kirin that subject to there being no higher offer for the F&B Business (within certain parameters), it shall vote in favour of the sale of the F&B Business to Kirin in F&N shareholders' meeting relating to approval of the sale.

The SIC had earlier confirmed that such arrangements between OUE Baytown and Kirin did not constitute special deals for the purposes of the Code, subject to the independent financial adviser to the independent directors of F&N publicly stating that in their opinion the terms of the Kirin F&B Offer are fair and reasonable.

It eventuated that the independent financial adviser (IFA), JP Morgan, formed the opinion that the terms of the F&B offer made by Kirin for the F&B assets were fair but not reasonable, from a financial point of view.

A factor JP Morgan took into account was the fact that the Kirin F&B Offer was a negotiated sale (rather than an auction) in which F&N had not an opportunity to participate in negotiations or to seek alternatives. As such, the Kirin F&B Offer price for the F&B Business was not derived from a market check involving F&N, for the purpose of maximizing value to F&N. The independent financial adviser further noted that since F&N was not a distressed seller, a price discovery method for the F&B assets would be practicable as part of a thorough market check. Consideration was also given by the independent financial adviser to the fact that F&N shareholders who continue to remain invested in F&N could potentially see, under the terms of the Kirin F&B Offer, a major asset sold without a defined use of proceeds.

Following the transaction, the SIC issued a practice statement on fair and reasonable statements by IFAs. The term “fair and reasonable” should be regarded as comprising two distinct concepts. The term “fair” relates to an opinion on the value of the offer price or consideration compared against the value of the Offeree Securities. An offer is “fair” if the price offered is equal to or greater than the value of the Offeree Securities. In considering whether an offer is “reasonable”, the IFA should consider matters other than the value of the Offeree Securities. Such matters include, but are not limited to, the existing voting rights in the offeree company held by the offeror and its concert parties and the market liquidity of the Offeree Securities. Under this approach, an offer can be “fair and reasonable”, “not fair but reasonable”, “not fair and not reasonable” or “fair but not reasonable”. In all cases, the IFA must explain clearly the bases for its conclusion. While the opinion “fair but not reasonable” is not ruled out, an offer would normally be considered “reasonable” if it is assessed to be “fair”. Hence, an opinion that an offer is “fair but not reasonable” should not be given unless there are strong and exceptional grounds.
However, the broader lesson from JPMorgan’s conclusion in the OUE offer case is that in structuring future deals, one key commercial consideration should be whether such side deals (such as the mutual undertakings between OUE Baytown and Kirin) should be intricately built into the offer, or not, such that, without the side deal, the larger bid exercise fails as well.

In the OUE case, the OUE offer survived even though the Kirin F&B offer terms were advised by JP Morgan to be fair but not reasonable.

The second special feature of the OUE offer was that F&N agreed to pay OUE Baytown a break fee equal to the costs and expenses reasonably incurred in respect of its legal and financial advisers and lenders in connection with the making of the OUE Offer, subject to a maximum of S$50 million and the operation of a reduction mechanism.

The break fee would be payable in the event that a general offer (not being the OUE offer) for the F&N Shares at or above the OUE offer price becomes or is declared unconditional as to acceptances within 85 calendar days from the date of the OUE Offer announcement or such longer period that the Council may allow the other offer to continue.

The break fee would not be payable, inter alia, if, after the announcement of the OUE Offer, OUE Baytown withdraws or is prevented from proceeding with the OUE Offer at any time before (i) the despatch of the offer document, or (ii) the closing date of the offer.

The SIC had earlier issued a ruling that such a break fee arrangement was in compliance with Rule 13 (on Break Fee) of the Code.

F&N stressed that the break fee was not to be construed as a positive recommendation of the OUE Offer by the F&N board, nor is the minimum offer price of $9.08 per Share to be construed as a statement by the F&N board that such an offer price was fair and reasonable. F&N explained that the break fee arrangement was put in place in order to create a competitive bid situation, thereby maximising value for its shareholders.

The other feature of the takeover bids by TCC Assets and OUE Baytown was that the Council felt fit, in the interests, inter alia, of providing certainty to F&N shareholders in making a decision on the two competing bids, to set out its own auction procedure for the two bids.

The breakthrough to resolution of the two competing bids came on 18 January 2013, when TCC Assets revised its offer price for F&N shares to $9.55 (from $8.88 previously), which was not counterbid by OUE Baytown, whose original and unchanged offer at $9.08 lapsed on 21 January 2013, without turning unconditional.

Similar to the auction procedure adopted for F&N, the 2016 amendments have provided for the aforementioned Modified Auction Procedure, which is designed to achieve finality and an orderly conclusion to a competitive situation in an open and transparent manner.
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