



# Contents

---

## Chapter One: Introduction to the Hong Kong Codes on Takeovers and Mergers and Share Repurchases

*Brian Ho, Securities and Futures Commission, Hong Kong*

A. THE CODES.....	1
B. ADMINISTRATION OF THE CODES.....	2
C. ENFORCEMENT OF THE CODES.....	3
D. THE ROLE OF THE PANEL AND THE TAKEOVERS APPEAL COMMITTEE.....	3
E. VOLUNTARY AND NON-STATUTORY NATURE OF THE CODES.....	4
F. MAIN RULES.....	5
1. Equal treatment of shareholders (GP1) and requirement to make a general offer (GP2).....	5
2. Equal dissemination of information (GP3).....	6
3. Takeover offers should only be made after careful consideration (GP4).....	7
4. Sufficient information, advice and time must be given to shareholders (GP5).....	7
5. Full and prompt disclosures during an offer to preserve fair markets (GP6).....	8
6. No oppression of minority shareholders (GP7) or frustration of offers (GP9).....	8
7. Directors should act according to their fiduciary duties (GP8).....	8

G. AMENDMENTS TO THE CODES.....	9
1. Code review in 2005.....	9
2. Amendments in 2008.....	12
H. CONCLUSION.....	15

## Chapter Two: Preliminary Questions and First Steps: Rules 1–3

*Martin Sabine, Somerly Limited, Hong Kong*

A. PRELIMINARY QUESTIONS.....	17
1. The offeror.....	17
2. The offeree company.....	21
B. RULES 1–3: APPROACH, ADVICE AND ANNOUNCEMENTS.....	22
1. Rule 1 — Approach.....	22
2. Rule 2 — Independent advice, conflicts of interests, shareholder approval and delistings/privatisations.....	24
3. Announcements.....	32
4. Summary.....	39

## Chapter Three: Mandatory and Voluntary Offers

*Angelina Lee and Frank Yuen, Woo, Kwan, Lee & Lo, Hong Kong*

A. INTRODUCTION.....	41
B. MANDATORY OFFER — RULE 26.....	42
1. When does a mandatory offer obligation arise?.....	42
2. Lowering of the trigger and the creeper in October 2001.....	42
3. Transitional provisions.....	43
4. Persons acting in concert.....	44
5. Interpretation of Rule 26.1 and further interpretation of the definition of 'acting in concert'.....	45
C. DISPENSATION FROM A MANDATORY OFFER OBLIGATION.....	50
1. Whitewash vote.....	50
2. Foreclosure on security provided for a loan.....	50
3. Rescue operations.....	51
4. Inadvertent mistakes.....	51
5. Single shareholder within a group holding more than 30%.....	51
6. Placing and top-up transactions.....	52
7. Verification of independence of placees.....	52
D. CONSIDERATION.....	52
1. Mandatory offers.....	52
2. Voluntary offers.....	53
E. CONDITIONS.....	55
1. Acceptance condition.....	55
2. Conditions of a mandatory offer.....	56
3. Conditions of a voluntary offer.....	56

F. APPROPRIATE OFFERS FOR CONVERTIBLES, WARRANTS, ETC — RULE 13.....	56
G. OFFERS FOR MORE THAN ONE CLASS OF EQUITY SHARES — RULE 14.....	57
H. PARTIAL OFFERS.....	57
1. Executive's consent required.....	57
2. Where independent approval is required.....	58
3. Restriction on acquisitions during and after the offer.....	58

## Chapter Four: Timing and Contents of the Offer and Response Documents

*Alexander Que and Gavin Nesbitt, Deacons, Hong Kong*

A. INTRODUCTION.....	59
B. TIMING.....	59
1. General principles.....	59
2. Posting date.....	60
3. Timing of the response.....	61
4. Other critical dates.....	61
C. CONTENTS OF THE DOCUMENTATION.....	63
1. General principle.....	63
2. Format and overview of the document.....	64
3. Specific contents of the offer document.....	66
4. The response document.....	67
5. Other offer documentation.....	69
D. RESPONSIBILITY FOR THE OFFER AND RESPONSE DOCUMENT.....	69
1. General principle.....	69
2. Discharge of the responsibility of directors and financial advisers.....	70
3. Verification procedures.....	71
E. OTHER REQUIREMENTS OF THE DOCUMENTATION — THE LISTING RULES.....	72

## Chapter Five: Disclosure Obligations and Dealing Restrictions Before, During and After a Takeover Offer

*Teresa Ko, Freshfields Bruckhaus Deringer, Hong Kong*

A. INTRODUCTION.....	75
B. DISCLOSURE OBLIGATIONS.....	75
1. Position under the SFO.....	75
2. Position under the Listing Rules.....	79
3. The Takeovers Code.....	80
C. DEALINGS WITH PARTICULAR CONSEQUENCES.....	82
1. Requirement to make a cash offer — Rule 23.....	82



2. Purchases resulting in a minimum level of consideration — Rule 24.....	83
3. Mandatory offers — Rule 26.....	84
4. Restrictions on sales during the offer period — Rule 21.2.....	84
5. Restrictions on dealings in offeror securities during a securities exchange offer — Rule 21.3.....	85
6. No increases permitted during final 14 days of the offer period — Rule 24.3.....	85
D. PROHIBITED DEALINGS.....	85
1. Prohibitions on certain dealings under the Takeovers Code.....	85
2. Restrictions on dealings under the SFO.....	88

### Chapter Six: Conduct and Announcements During an Offer; Revision of an Offer; Restrictions Following an Offer; Sanctions which may be Imposed for Breaches

*Alexander Que and Gavin Nesbitt, Deacons, Hong Kong*

A. INTRODUCTION.....	91
1. General principles.....	92
2. Status of the Takeovers Code.....	93
B. CONDUCT DURING THE OFFER.....	94
1. Offer period.....	95
2. Restrictions on frustrating action by an offeree — Rule 4.....	95
3. No withdrawal of an offer — Rule 5.....	99
4. Equality of information to competing offerors — Rule 6.....	100
5. Directors' obligations during the offer period — Rule 7.....	102
6. Prompt registration of transfers — Rule 27.....	102
7. Proxies in acceptances — Rule 29.....	102
8. Shareholder solicitations — Rule 34.....	103
9. Announcements made and documents released during the course of the offer.....	105
10. Revision of an offer.....	111
11. No misleading statements, and statements as to increase an extension — Rule 18.....	114
C. RESTRICTIONS FOLLOWING OFFERS.....	115
1. Delistings and compulsory acquisitions — Rules 2.2 and 2.11.....	115
2. Delay before subsequent offer — Rule 31.....	116
D. SANCTIONS FOR BREACHES OF THE TAKEOVERS CODE.....	119
1. The range of sanctions available.....	119
2. Imposition of sanctions in practice.....	120

### Chapter Seven: Share Repurchases; the General Offer Rule; the Exemptions; the Offer Document; and the Takeovers Code Consequences

*David Yun, Skadden, Arps, Slate, Meagher & Flom, Hong Kong*

A. INTRODUCTION.....	123
1. Companies to which the Repurchase Code applies.....	124
2. Definition of a share repurchase.....	124
B. THE GENERAL PRINCIPLES.....	125
C. THE REQUIREMENT FOR A GENERAL OFFER.....	125
D. EXEMPTIONS FROM THE GENERAL OFFER REQUIREMENT.....	126
1. On-market share repurchases.....	127
2. Off-market share repurchases.....	128
3. Employee share repurchases.....	129
4. Share repurchases made at the company's instigation.....	129
5. Share repurchases made at the shareholder's instigation.....	129
6. Share repurchases required by law.....	130
E. THE OFFER DOCUMENT.....	130
F. SHAREHOLDER APPROVAL.....	132
G. THE OFFER PERIOD.....	133
H. DELISTINGS AND PRIVATISATION.....	133
I. TAKEOVERS CODE IMPLICATIONS.....	134
J. DISTRIBUTIONS OF SHARES FOLLOWING A SHARE REPURCHASE.....	135
K. ANNOUNCEMENTS, ADVERTISEMENTS AND SUSPENSIONS.....	135
L. SECRECY.....	136
M. STANDARD OF CARE AND RESPONSIBILITY.....	136
N. CONDITIONS.....	136
O. TIMING OF THE TAKING UP OF, AND PAYMENT FOR, SHARES.....	136
P. WITHDRAWAL OR LAPSE OF A GENERAL OFFER.....	136
Q. SHAREHOLDER SOLICITATIONS.....	137
R. WAIVERS.....	137