

Takeovers Executive issues new Practice Note 24

The Takeovers Executive recently issued a new [Practice Note 24](#), which sets out guidance on how the Executive will treat the appointment of an independent receiver or liquidator over a controlling interest in a Hong Kong public company, and when an offer period will commence in this context.

Previous position

In a [Takeovers Bulletin](#) issued in March 2020, the Executive stated an announcement under Rule 3.7 of the Takeovers Code (a “talks announcement”) should be published and an offer period should commence as soon as an independent receiver or liquidator takes control of 30% or more of the voting rights of a company. This was on the expectation that a receiver or liquidator will normally be looking to dispose of the stake swiftly, giving rise to a possible offer.

Current position

Practice Note 24 changes the above approach. Going forward, upon the appointment of an independent receiver or liquidator over a controlling interest in a Hong Kong public company:

- there will be no requirement to publish a 3.7 announcement unless the receiver or liquidator indicates: (i) it is actively looking for a potential purchaser for the controlling stake; or (ii) it is already in discussion with a potential purchaser over the controlling stake; and
- if either case applies, the offeree company should submit a draft 3.7 announcement to the Executive for vetting, in which it discloses the appointment of a receiver or liquidator and the reason(s) for commencing an offer period. The offeree should then publish monthly update announcements in line with existing practice.

Where the appointment of the receiver or liquidator did not initially result in the commencement of an offer period, but a potential purchaser of a controlling stake arises in the future, an offer period would commence upon the issue of a Rule 3.5 firm intention announcement or a Rule 3.7 announcement, which should only be made if an announcement obligation under Rule 3.1, Rule 3.2 or Rule 3.3 arises (for example, where there is a rumour or speculation about a possible offer or an undue movement in share price). This is analogous to the Executive’s approach to talks between a controlling shareholder and a potential purchaser of a controlling stake (i.e. a 3.7 announcement should not be issued for convenience and there should be no need to issue such an announcement if matters are kept confidential during the negotiation process).

Rationale

The Executive has removed the default requirement to issue a 3.7 announcement and commence an offer period upon the appointment of an independent liquidator / receiver because it found that in many instances, the receiver or liquidator may not be actively seeking or negotiating with a potential purchaser due to market factors or a lack of interest in the assets. In other instances, there may be settlement talks between the lender and the borrower. This resulted in a number of cases where there was a prolonged offer period with no real prospect of an offer, while the offeree company is subject to additional restrictions and compliance obligations that apply during an offer period. An extended offer period without an imminent offer could also give rise to possible false market concerns.

Other points to note

Practice Note 24 applies to the appointment of *independent* receivers or liquidators. The Executive had previously **indicated** the exemption under Note 2 on dispensations from Rule 26 (i.e. a general offer obligation would not be triggered by a receiver or liquidator acquiring control over a secured controlling stake) would not be available where a lender appoints its own employees, officers or related parties (or employees or officers of such related parties) to take over the secured controlling stake. Lenders should therefore be mindful of appointing any potentially non-independent receivers or liquidators which may trigger an offer obligation (unless the obligation is otherwise waived by the Executive).

The Practice Note states it does not affect a party's existing disclosure obligations under the inside information regime of Part XIVA of the Securities and Futures Ordinance. Although not expressly mentioned by the Executive, parties should also comply with existing obligations to file Part XV disclosure of interest forms and Companies Registry forms (which apply to Hong Kong companies and registered non-Hong Kong companies) in relation to the appointment of receivers and liquidators.

Offeree companies which have been in extended offer periods following the appointment of a receiver or liquidator are encouraged to consult with the Executive to end the offer period if an offer is unlikely to be imminent.

Contact



CLARA CHOI
PARTNER
T: +852 2901 7217
E: clara.choi@slaughterandmay.com



VINCENT CHAN
PARTNER
T: +852 2901 7220
E: vincent.chan@slaughterandmay.com

London
T +44 (0)20 7600 1200
F +44 (0)20 7090 5000

Brussels
T +32 (0)2 737 94 00
F +32 (0)2 737 94 01

Hong Kong
T +852 2521 0551
F +852 2845 2125

Beijing
T +86 10 5965 0600
F +86 10 5965 0650

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