

LE Paper 17 (Regulation of Takeovers and Share Buy-backs)

Syllabus

Topic 1: General framework

- 1 Background to takeovers and share buy-backs in Hong Kong
- 2 The role of the TC Adviser
- 3 Licensing and registration requirements
- 4 Key laws and regulations
- 5 Regulatory codes of conduct issued by the Securities and Futures Commission ("SFC")
- 6 SFC's powers

Topic 2: Scope and application of the Codes on Takeovers and Mergers and Share Buy-backs

- 1 Application
- 2 Ten General Principles
- 3 Administration
- 4 Enforcement

Topic 3: Takeovers structures

- 1 Different arrangements and approaches
- 2 Acting in concert
- 3 General offers
- 4 Voluntary general offers
- 5 Mandatory general offers
- 6 Schemes of arrangement
- 7 Privatisation
- 8 The offer timetable

Topic 4: Obligations of the offeror and the offeree company

- 1 General considerations
- 2 Before the offer period
 - (1) Offeror

- (2) Offeree company
- 3 At the commencement of an offer period
 - (1) Offeror
 - (2) Offeree company
- 4 Announcements obligations under the Code on Takeovers and Mergers
 - (1) Before an offer
 - (2) At the commencement of an offer period
 - (3) On the closing date
- 5 Following the end of an offer period

Topic 5: Obligations of financial advisers

- 1 Preparing for an engagement
- 2 Obligations common to all financial advisers
- 3 Requirements relating to financial information
- 4 Financial adviser to the offeror
- 5 Independent financial advisers

Topic 6: Other considerations

- 1 Dealings in securities of the offeree company
- 2 Dealings in securities of the offeror
- 3 Disclosure of dealings
- 4 Special deals and other arrangements

Topic 7: Share buy-backs

- 1 Introduction
- 2 Share buy-backs by general offer
- 3 Off-market share buy-backs
- 4 On-market share buy-backs
- 5 Exempt share buy-backs

Topic 8: Case studies

- 1 Executive Director of the Corporate Finance Division of the Securities and Futures Commission
- 2 Takeovers and Mergers Panel

Expected Learning Outcomes

Topic 1: General framework

At the end of this Topic, candidates should be able to:

- (a) cite the primary purposes of the Code on Takeovers and Mergers (“Takeovers Code”) and the Code on Share Buy-backs (“Share Buy-backs Code”);
- (b) identify the codes that govern the execution of TC Transactions and describe their overall structure and standing within Hong Kong’s regulatory framework;
- (c) explain the role of financial advisers in the integrity of the market in relation to TC Transactions;
- (d) explain the other laws and regulations that may affect the conduct of a TC Transaction;
- (e) describe the licensing and registration requirements as well as the competence requirements that apply to TC Advisers;
- (f) explain the relevance of the SFC’s powers under the Securities and Futures Ordinance (“SFO”) to license, supervise, investigate, and impose disciplinary sanctions.

Topic 2: Scope and application of the Codes on Takeovers and Mergers and Share Buy-backs

At the end of this Topic, candidates should be able to:

- (a) explain the ten General Principles of the Codes;
- (b) describe the scope of the Codes and identify the factors that determine if an issuer of securities is subject to them, including the relevant individuals and their roles;
- (c) describe the different roles of the Executive, the Panel and the TAC;
- (d) explain the circumstances when the Executive and the Panel may exercise disciplinary powers and what these powers are;

- (e) identify the composition, standing and role of the Panel in regulating takeover activity;
- (f) describe the procedures used by the TAC.

Topic 3: Takeovers structures

At the end of this Topic, candidates should be able to:

- (a) explain the circumstances when persons may be regarded as acting in concert, including the presumptions that apply;
- (b) explain the circumstances where the actions of one member of a concert party may affect the obligations of other concert party members;
- (c) explain the different types of offers and takeover structures used to gain control of another company, including voluntary and mandatory offers and the obligations and limitations associated with each;
- (d) determine the circumstances that trigger a mandatory offer and a comparable offer;
- (e) apply the trigger threshold and creeper threshold to different transaction scenarios;
- (f) determine the circumstances where the Executive Director of the Corporate Finance Division of the Securities and Futures Commission (“Executive”) may consider granting a waiver from an obligation to make a mandatory offer;
- (g) describe the circumstances and requirements for a whitewash transaction;
- (h) determine the impact on the conduct of transactions where the chain principle applies;
- (i) explain how a scheme of arrangement operates and how it is different from a general offer;
- (j) explain the provisions of the Takeovers Code that concern shareholder approvals and disclosure;
- (k) explain the relationship of the Takeovers Code to various provisions of the Listing Rules;

- (l) explain how to construct a timetable in accordance with the Takeovers Code and apply it to a transaction scenario;
- (m) determine when an offer may be withdrawn.

Topic 4: Obligations of the offeror and the offeree company

At the end of this Topic, candidates should be able to:

- (a) explain the roles and responsibilities of the board;
- (b) explain the differing obligations of offeror and offeree company's boards at various stages of a TC Transaction;
- (c) explain the confidentiality obligations that apply to the offeror and offeree company and the consequences where confidentiality is not maintained;
- (d) explain the provisions of the Takeovers Code concerning dealing and disclosure to different scenarios;
- (e) explain when an offeror's board may be required to obtain independent advice;
- (f) determine which persons an offeror may approach before the offer period and the steps required to be taken by an offeror before approaching an offeree company;
- (g) explain the circumstances where shareholder solicitation may only be undertaken by a financial adviser;
- (h) explain the actions that a board is prohibited from taking during an offer period;
- (i) determine the circumstances that may constitute a "frustrating action";
- (j) explain the announcement obligations before and after the offer period commencing, including who is responsible and the requirements for different documents and announcements;
- (k) explain the required contents of an offer document and the related publication requirements;

- (l) describe the obligations of the offeror and the offeree company after the close or lapse of an offer.

Topic 5: Obligations of financial advisers

At the end of this Topic, candidates should be able to:

- (a) explain what a financial adviser must consider before accepting an engagement, including possible conflicts of interest;
- (b) explain the consequences of accepting a financial adviser role, including the matters that are necessary to be considered in relation to the associates of a financial adviser;
- (c) explain the general roles and responsibilities of financial advisers and other professional advisers, including as to proper communication, consultation and cooperation with the Executive Director of the Corporate Finance Division of the Securities and Futures Commission ("Executive") and the Securities and Futures Commission ("SFC"), ensuring compliance with the Codes, and confidentiality;
- (d) explain the financial adviser's roles and post-meeting obligations in relation to meetings between the offeror and offeree company, as well as meetings with other persons including shareholders and analysts;
- (e) explain the verification process and the standard requirement of documents and announcements;
- (f) explain the particular roles of the financial adviser in relation to the publication of financial information, such as profit forecasts and valuations;
- (g) explain the steps required to be taken in relation to the offeror's financial capability to implement an offer, and the financial adviser's obligations arising in relation thereto;
- (h) determine whether a financial adviser is able to act as an IFA, the conditions necessitating the appointment of an IFA, and their core duties.

Topic 6: Other considerations

At the end of this Topic, candidates should be able to:

- (a) determine the persons who may be subject to dealing restrictions and disclosure obligations;
- (b) explain the circumstances when dealings may be restricted, including the underlying consequences, and when they may constitute insider dealing;
- (c) explain the dealing disclosure obligations of the offeror and the offeree company, their associates, and the significance of EFM and EPT status in this context;
- (d) differentiate when dealings in relevant securities may or may not invoke Takeovers Code considerations;
- (e) explain what may constitute a special deal and apply the requirements applicable to special deals to different scenarios;
- (f) explain the provisions of the Takeovers Code relevant to inducement fees, break fees, exclusivity agreements and standstill agreements.

Topic 7: Share buy-backs

At the end of this Topic, candidates should be able to:

- (a) describe the distinctions between on-market, off-market and exempt share buy-backs;
- (b) explain the process of share buy-backs;
- (c) explain the relationship between the requirements of the Share Buy-backs Code and various provisions of the Takeovers Code and the Listing Rules;
- (d) explain the provisions of the Share Buy-backs Code that concern shareholder approval and disclosure.

Topic 8: Case studies

At the end of this Topic, candidates should be able to:

- (a) determine breaches of codes of conduct applicable to a financial adviser and breaches of the Codes on Takeovers and Mergers and Share Buy-backs (“Codes”);
- (b) explain certain deficiencies and inadequacies in the work of financial advisers;
- (c) describe the different types of enforcement that might be imposed in relation to deficient work of a financial adviser;
- (d) explain various common issues that have arisen under the Codes to different transaction scenarios;
- (e) describe the reasons behind decisions and statements of the Executive and the Panel;
- (f) explain the importance of integrity and cooperation with the Executive when a financial adviser is undertaking an assignment subject to the Codes.