

SECURITIES INDUSTRY COUNCIL
(“SIC” OR THE “COUNCIL”)
PRACTICE STATEMENT ON THE MERGER PROCEDURES
OF THE COMPETITION COMMISSION OF SINGAPORE (“CCS”)

Introduction

An offer which is subject to the Singapore Code on Take-overs and Mergers (the “Code”) may also fall within the ambit of the merger provisions of the Competition Act (Chapter 50B) (the “Act”). In such cases, parties to the take-over offer will need to comply with the requirements under both the Code and the Act.

Pre-conditional Offers

2 To comply with both the Code and the Act, an offeror may announce:

- (i) a pre-conditional share purchase or put and call option agreement which, when the pre-conditions are fulfilled, will result in the offeror triggering a mandatory offer; or
- (ii) a pre-conditional voluntary offer,

where one of the pre-conditions includes the condition that the CCS issues a favourable decision on the offer permitting it to proceed.

Conditional Offers

3 In the case where an offeror announces an offer without prior clearance by the CCS by way of a pre-conditional offer as described above, the following apply:

Mandatory offers

- (1) A mandatory offer under Rule 14 is required to be subject (in addition to the acceptance condition) to the condition that the offer lapses when the CCS (i) makes a decision to proceed to a Phase 2 review¹ or (ii) issues a direction that prohibits the offeror from acquiring voting rights in the offeree company², before the first closing date or the date when the offer becomes or is declared unconditional as to acceptances, whichever is the later (the “Relevant Condition”).

- (2) In the event the mandatory offer lapses pursuant to the Relevant Condition, the obligation under Rule 14 does not lapse. Accordingly, if the CCS subsequently issues a favourable decision, the mandatory offer must be reinstated on the same terms and at not less than the same price as soon as practicable. On the other hand, if the CCS issues an unfavourable decision prohibiting the mandatory offer, Council will consider whether, if there is no order to such effect by the CCS, to require the offeror to reduce the percentage of shares carrying voting rights in which it and persons acting in concert with it control to below 30% or a level which is less than the

¹ As defined in the *CCS Guidelines on Merger Procedures*.

² For more details, please see *Interim Measures, paras 3.49 to 3.55 of the CCS Guidelines on Merger Procedures*.

1% limit on acquisitions in any 6-month period before the mandatory offer was incurred. The Council would normally expect an offeror whose offer has lapsed pursuant to the Relevant Condition to proceed with all due diligence before the CCS. However, if, with the consent of the Council and within a limited period, the offeror reduces the percentage of shares carrying voting rights in which it and persons acting in concert with it control to below 30%, or to a level which is less than the 1% limit on acquisitions in any 6-month period before the mandatory offer was incurred, the Council will regard the obligation as having lapsed.

- (3) During the Phase 2 review by the CCS, the offeror and persons acting in concert with it may not acquire any further shares in the offeree company.

Voluntary offers

- (4) A voluntary offer is required to include the Relevant Condition as one of the conditions to the offer. In addition, the voluntary offer may be subject to the condition that the CCS issues a favourable decision during the Phase 1 review³ to allow the voluntary offer to proceed. In this regard, notwithstanding Rule 15.1 (including Notes 1 and 2 on Rule 15.1), the offeror may state that such favourable decision must be on terms satisfactory to it.

³ As defined in the *CCS Guidelines on Merger Procedures*.

- (5) In the event the CCS issues a favourable decision permitting the voluntary offer to proceed following the lapse of the voluntary offer pursuant to the Relevant Condition, the offeror may, notwithstanding Rule 33.1(a), announce a new offer within 21 days of the date of issue of such favourable decision. In any case, a new offer period will be deemed to begin following the date of issue of the favourable decision. If there is no announcement of a new offer subsequently, this offer period will last until either the end of 21 days or the day the offeror announces that it does not intend to make an offer, whichever is earlier.
- (6) When the new offer period begins upon CCS' clearance of an offer, the 3-month period referred to in Rule 15.2 will be deemed to be the period between the date the Relevant Condition is invoked and the date of issue of the favourable decision by the CCS.

4 In the case of both mandatory and voluntary offers, the effect of lapsing an offer pursuant to the Relevant Condition means not only that the offer will cease to be capable of further acceptance but also that shareholders and the offeror will thereafter cease to be bound by prior acceptances. In addition, (i) General Principle 7 and Rule 5 on frustration of offers by an offeree board, and (ii) Rule 9.2 on information to competing offeror will continue to apply until CCS issues a decision on the offer. For the purposes of Rule 9.2, Council will normally deem the offeror whose offer is under Phase 1 or Phase 2 review to be a bona fide potential offeror.

In the event that there is a delay in the Phase 1 review, the Council may consider extending the offer timetable by deeming “Day 39” (Rule 22.8) to be the second day following the announcement of a decision on the Phase 1 review by CCS, with consequent changes to the Final Day Rule (Rule 22.9).

Practice Statements are issued by the SIC to provide informal guidance to companies involved in take-overs and practitioners as to how the SIC normally interprets and applies relevant provisions of the Code in certain circumstances. Practice Statements do not form part of the Code. Accordingly, they are not binding on the SIC and are not a substitute for consulting the SIC to establish how the Code applies in a particular case.

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