

**SECURITIES INDUSTRY COUNCIL
("SIC" OR THE "COUNCIL")**

**PRACTICE STATEMENT ON THE WAIVER OF THE APPLICATION
OF THE SINGAPORE CODE ON TAKE-OVERS AND MERGERS (THE
"CODE") TO UNLISTED PUBLIC COMPANIES**

Introduction

The Code applies to, amongst others, unlisted public companies incorporated in Singapore with more than 50 shareholders and net tangible assets of S\$5 million or more. Such companies may apply to the Council to waive the application of the Code ("Code Waiver"). This Practice Statement sets out the regime for an unlisted public company to obtain a Code Waiver.

Code Waiver Regime

2 An unlisted public company¹ (the "Company") seeking a Code Waiver should apply in writing to the SIC Secretariat². The application should provide certain prescribed information on the Company and include a signed confirmation from the Company's board of directors that the following conditions (the "Waiver Conditions") have been or will be (as the case may be) complied with:

- (a) the number of shareholders in the Company is 50 or fewer, excluding the following persons (the "Excluded Persons"):
 - (i) institutional investors as defined in section 4A(1)(c) of the Securities and Futures Act 2001 ("SFA");
 - (ii) accredited investors as defined in section 4A(1)(a) of the SFA;
 - (iii) a bona fide director or equivalent person, former director or equivalent person, consultant, adviser, employee or former

¹ Unlisted public companies which do not have more than 50 shareholders and NTA of \$5 million may also apply for a Code Waiver in advance if they would soon fall within the ambit of the Code.

² Applications should be sent to sic@mas.gov.sg.

employee of the Company or a related company of that Company; and

- (iv) corporations, partnerships and trusts the sole purpose of which is to hold investments and whose shareholders, partners and/or beneficial owners comprise solely of persons set out in paragraph 2(a)(i), (ii) and (iii);
- (b) the Company has issued a written notification³ to all its shareholders⁴ informing them of the Company's intention to obtain the Code Waiver and the implications arising as a result thereof. Such notification must be issued at least 21 calendar days prior to the date of the Company's application to the Council for the Code Waiver;
- (c) subsequent to the Company's issuance of such notification, the Company must not have received objections to the Code Waiver from shareholders representing more than 10% of the total voting rights of the Company during the 21-day notice period⁵;
- (d) the Company has taken or will take (in the event of subsequent rounds of fundraising) reasonable measures to verify whether a shareholder or an incoming shareholder is an Excluded Person. The Company should put in place the necessary controls and procedures to establish whether a shareholder continues to meet the definition of an Excluded Person in order to comply with Waiver Condition (a) on an ongoing basis; and

³ The notification may be sent by post or electronic dissemination.

⁴ If the Company has outstanding instruments convertible into, rights to subscribe for, and options in respect of, new shares which carry voting rights ("Convertibles"), the written notification must also be issued to these holders.

⁵ The percentage of shareholder objections to the Code Waiver should be calculated with reference to the total voting rights of the Company as at the end of the 21-day notice period.

- (e) once the waiver is effective, the Company will state its waiver status⁶ prominently on its corporate website (if any) and will notify:
 - (i) shareholders⁷ that it has obtained the Code Waiver sought from Council; and
 - (ii) new investors before they invest (via their subscription agreements or otherwise) that it is not subject to the Code and the implications arising from the Code Waiver.

3 An application template setting out the prescribed information to be provided and the form of confirmation by the board of directors is set out in Appendix 1 of this Practice Statement.

Notification to Existing Shareholders

- 4 In the Company's written notification to its shareholders, it must:
- (a) set out key protections afforded by the Code and the risks associated with the loss of such protection to shareholders if the Code Waiver is granted; and
 - (b) provide a point of contact for shareholders to object to or raise queries on the Code Waiver with the Company during the 21-day notice period.

A template of the notification to be sent by the Company to its shareholders is set out in Appendix 2 of this Practice Statement.

⁶ The Company should state to the effect that the Code does not apply to the Company and the protections afforded by the Code do not apply to shareholders of the Company, including the right to receive a minimum offer price from an offeror in a mandatory or voluntary offer.

⁷ If a written notification was issued to holders of Convertibles under Waiver Condition 2(b), the Company should also notify these holders that the Company has obtained the Code Waiver.

Grant of Code Waiver

5 The list of unlisted public companies that have obtained a Code Waiver (the “Code Waiver List”) will be published on the SIC’s website⁸.

6 The Code Waiver will take effect when the Company is published on the Code Waiver List, 21 calendar days⁹ after the date of application to the Council or as otherwise communicated to the Company.

7 The Council reserves the right to grant the Code Waiver subject to further conditions, not to grant the Code Waiver or, if granted, revoke the Code Waiver, where circumstances warrant it.

8 If the Company fails to comply with the Waiver Conditions at any point in time, the Code Waiver will cease to be in effect. The Company must promptly notify the Council and all relevant parties¹⁰ of the cessation of the Code Waiver.

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 or the SIC Secretariat and are not a substitute for consulting the SIC Secretariat to establish how the Code applies in a particular case.

Issued by Securities Industry Council

7 October 2022

⁸ <https://www.mas.gov.sg/securities-industry-council>

⁹ The 21-day period excludes the date of notification to the Council. If the 22nd day falls on a non-business day, the Code Waiver will be published on the next business day.

¹⁰ This includes existing shareholders of the Company, holders of Convertibles (if any) and a party or parties in discussion with the Company on transactions that may have Code implications.

Appendix 1

[Letterhead of Applicant]

Dear Sirs

WAIVER OF THE APPLICATION OF THE SINGAPORE CODE ON TAKE-OVERS AND MERGERS TO [NAME OF THE COMPANY] (THE “COMPANY”)

Unless otherwise defined, the terms used or referred to in this letter shall have the same meanings as assigned to them in the Practice Statement on the Waiver of the Application of the Code to Unlisted Public Companies, which was issued by the Council on 7 October 2022 (the “Practice Statement”).

On behalf of the Company, I notify the Council that the Company would like to apply for the Code Waiver.

General Details

1.	Name of Company	:	
2.	Unique Entity Number (UEN) of Company	:	
3.	Net Tangible Asset as at date of this letter (S\$ million)	:	
4.	Registered office address	:	
5.	Email address	:	
6.	Contact number	:	
7.	Liaison person for the Code Waiver	:	Name and designation:
			Contact number:
			Email address:

Compliance with Waiver Conditions

Shareholder Size			
8.	No. of shareholders as at the date of this letter	:	
9.	No. of shareholders as at the date of this letter after excluding Excluded Persons	:	
Notification to shareholders [and holders of Convertibles]* on the Code Waiver			
10.	Date of notification to shareholders [and holders of Convertibles]*	:	
Objections to Code Waiver			
11.	No. of shareholders who objected to the Code Waiver	:	
12.	No. of voting shares held by shareholders who objected to the Code Waiver (x)	:	
13.	Total number of voting shares in the Company as at the date of this letter (y)	:	
14.	% of voting shares represented by shareholders who objected to the Code Waiver [(x)/(y)]	:	

**delete as appropriate*

The signed confirmation by the board of directors of the Company that the Waiver Conditions have been and will be complied with is enclosed herewith.

Designation of Authorised Officer : _____

Signature of Authorised Officer : _____

Date (DD/MM/YYYY) : _____

[Letterhead of Applicant]

Date:

To: The Secretary
Securities Industry Council
25th Storey, MAS Building
10 Shenton Way
Singapore 079117

Dear Sirs

CONFIRMATION TO THE COUNCIL IN RELATION TO THE WAIVER OF THE APPLICATION OF THE SINGAPORE CODE ON TAKE-OVERS AND MERGERS TO THE COMPANY

1. We, the board of directors of the Company, refer to the Council's Practice Statement on the Waiver of the Application of the Singapore Code on Take-overs and Mergers (the "Code") to Unlisted Public Companies dated 7 October 2022 (the Practice Statement).
2. Unless otherwise defined, the terms used or referred to in this letter shall have the same meanings as assigned to them in the Practice Statement.
3. We hereby confirm that:
 - (a) the number of shareholders in the Company, excluding the Excluded Persons, is not more than 50:
 - (b) the Company has issued a written notification to all its shareholders [and holders of Convertibles]* informing them of the Company's intention to apply for the Code Waiver and the implications arising as a result thereof. Such notification was issued at least 21 calendar days prior to the Company's notification to the Council of the Code Waiver;

- (c) subsequent to the Company's issuance of such notification, the Company did not receive objections to the Code Waiver from shareholders representing more than 10% of the total voting rights of the Company during the 21-day notice period¹¹;
- (d) the Company has taken or will take (in the event of subsequent rounds of fundraising) reasonable measures to verify whether a shareholder or incoming shareholder is an Excluded Person and has put in place the necessary controls and procedures to establish whether a shareholder continues to meet the definition of an Excluded Person on an ongoing basis;
- (e) once the waiver is effective, the Company will state its waiver status¹² prominently on its corporate website (if any) and will notify:
 - (i) shareholders [and holders of Convertibles]* that it has obtained the Code Waiver sought from Council; and
 - (ii) new investors before they invest (via their subscription agreements or otherwise) that it is not subject to the Code and the implications arising from the Code Waiver; and
- (f) the Company will promptly notify the Council and all relevant parties¹³ if it fails to comply with the Waiver Conditions at any point in time in which case the Code Waiver will cease to be in effect.

¹¹ The percentage of shareholder objections to the Code Waiver was calculated with reference to the total voting rights of the Company as at the end of the 21-day notice period.

¹² To the effect that the Code does not apply to the Company and the protections afforded by the Code do not apply to shareholders of the Company, including the right to receive a minimum offer price from an offeror in a mandatory or voluntary offer.

¹³ This includes existing shareholders of the Company, holders of Convertibles (if any) and a party or parties in discussion with the Company on transactions that may have Code implications.

Yours faithfully,

for and on behalf of

Name of the Company

(Company Registration No.: [X])

[signature] _____

Name:

Title:

(duplicate as necessary)

**delete as appropriate*

Appendix 2**Sample notification letter to shareholders**

Dear *[name of shareholder or holder of Convertibles (if applicable)]*

NOTIFICATION OF INTENTION OF [NAME OF COMPANY] (THE “COMPANY”) TO APPLY FOR A WAIVER OF THE APPLICATION OF THE SINGAPORE CODE ON TAKE-OVERS AND MERGERS (THE “CODE”)

The Singapore Code on Take-overs and Mergers (the “Code”) is issued by the Monetary Authority of Singapore pursuant to section 321 of the Securities and Futures Act 2001. The Code is administered and enforced by the Securities Industry Council (the “SIC” or the “Council”).

The Code applies to unlisted public companies incorporated in Singapore with more than 50 shareholders and net tangible assets of S\$5 million or more. The Company *[is/will be]** subject to the Code as it *[has/will have]** more than 50 shareholders and net tangible assets of S\$5 million or more *[in the case where the Company will soon be subject to the Code, insert explanation why*]*.

The Code and the Council operate principally to ensure that shareholders are treated fairly and are not denied an opportunity to decide on the merits of a takeover and that shareholders of the same class are afforded equivalent treatment by an offeror. The Code also provides an orderly framework within which take-overs are conducted.

Pursuant to the Practice Statement on the Waiver of the Application of the Code to Unlisted Public Companies issued by the SIC on 7 October 2022 (the “Practice Statement”), the Company may obtain a waiver of the Code’s

application to the Company (the “Code Waiver”) if it meets certain conditions. These conditions include, amongst others, the following:

- (a) the number of shareholders of the Company, after excluding certain persons¹⁴, being 50 or fewer;
- (b) prior notification to all shareholders¹⁵ of the Company of the Company’s intention to apply for the Code Waiver; and
- (c) the Company not receiving objections to the Code Waiver from shareholders representing more than 10% of the voting rights in the Company.

Application for the Code Waiver

The board of directors of the Company (the “Board”) wishes to notify shareholders [and potential shareholders]* that it intends to apply for the Code Waiver on *[date which is at least 21 calendar days after the date of this letter]*. The Board believes that the Code Waiver will *[provide details of the Board’s reasons in support of the Code Waiver here]*. In this regard, the Board has *[list down the steps taken by the Board as necessary under the Company’s constitution before making such an application to the SIC]*.

Shareholders who object to the application for the Code Waiver must notify the Company of such objection by contacting *[contact person]* at *[contact details]* by *[the last day of the 21-day notice period]*. If the objections received by the Company by the abovementioned deadline represent 10% or less of the total voting rights, the Company may proceed to apply for the Code Waiver.

¹⁴ For example, institutional investors and accredited investors as defined under the Securities and Futures Act 2001. Please refer to paragraph 2(a) of the Practice Statement for further details of persons excluded.

¹⁵ If the Company has outstanding instruments convertible into, rights to subscribe for, and options in respect of, new shares which carry voting rights, the written notification must also be issued to these holders.

Brief details of the Code and the protections afforded by the Code are described below, and you are encouraged to read this information carefully. **You should note that upon the grant of the Code Waiver by the SIC, the protections afforded by the Code will no longer be applicable to you, including the right to receive a minimum offer price from an offeror in a mandatory or voluntary offer under the Code. Therefore, if you are in doubt as to the action to take or the implications of the Code Waiver on your investment in the Company, you should seek independent professional advice.**

In the event that our application to the Council for the Code Waiver is successful, we will notify you of the same.

The Code

Scope

The Code applies to both take-overs and mergers. While the Code is drafted with listed public companies, listed registered business trusts and REITs in mind, the Code also applies to unlisted public companies and unlisted registered business trusts with more than 50 shareholders or unitholders, as the case may be, and net tangible assets of S\$5 million or more.

Objective

One of the primary objectives of the Code is fair and equal treatment of all shareholders in a take-over or merger situation.

General Principles

The Code is based upon a number of General Principles which are essentially standards of good commercial conduct. In particular, under General Principle 3 of the Code, an offeror must treat all shareholders of the same class in an offeree company equally.

Mandatory Offers

One of the fundamental rules in the Code that is premised upon the principle of fair and equal treatment is Rule 14 on mandatory offers.

A mandatory offer is triggered when either:

- (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 it) carry 30% or more of the voting rights of the company; or
- (b) a person who, together with persons acting in concert with him, holds not less than 30% but not more than 50% of the company's voting rights, and such person, or any person acting in concert with him, acquires additional shares carrying more than 1% of the company's voting rights in any rolling six-month period.

The minimum offer price pursuant to mandatory offers is the highest price paid by the person, or any parties acting in concert with it, for voting rights in the target during the offer period and within six months prior to the commencement of the offer period.

For further information, please refer to the Code which is available on the SIC's website¹⁶.

** delete as appropriate*

¹⁶ <https://www.mas.gov.sg/securities-industry-council>