

TAKE-OVERS BULLETIN

A periodic newsletter by the Secretariat of the Singapore Securities Industry Council for participants in take-overs and mergers

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Highlights

- **Happy New Year**
- **Partial offers for more than 50%**
- **Retirement from, appointments and reappointments to the SIC**
- **H2 2017 Statistics on M&A activity**

Happy New Year

To our readers: We hope you have had a great start to 2018!

In this issue, we will discuss partial offers which could result in the offeror and its concert parties holding shares carrying more than 50% of the voting rights of the offeree company. We set out an example of a partial offer structure which will not be acceptable to the SIC, as it could result in the offeror and its concert parties holding a range of shareholding interest in an offeree company at the end of the partial offer.

Lastly, we would like to take this opportunity to thank our outgoing members and welcome the new appointments and reappointments to the SIC.

Partial offers for more than 50%

In the case of a partial offer which could result in the offeror and its concert parties holding shares carrying more than 50% of the voting rights of the offeree company, one concern is that offeree company shareholders would cede control of the offeree company without having an exit opportunity for their entire shareholding in the offeree company.

To address this concern, Rule 16.4(c) of the Singapore Code on Take-overs and Mergers (the "Code") states that the partial offer must be conditional, not only on the specified number or percentage of acceptances being received, but also on approval by the offeree company's shareholders (excluding the offeror, its concert parties and their associates). That the partial offer may not be declared unconditional as to acceptances unless acceptances are received for not less than the specified precise number of shares, percentage or proportion offered is reiterated in Rule 16.4(i) of the Code.

The objective here is so that it is clear to the offeree company shareholders and the market what the level of control the offeror would have in the event his partial offer is successful. This is particularly important where approval for the partial offer is required. Therefore, the SIC has declined to consent to partial offers which have been structured in such a way that could result in the offeror and its concert parties holding a range of shareholding interest in an offeree company.

An example of such a partial offer is as follows:

Party A holds 45% in Company X. Party B does not hold any shares in Company X. Both parties come together as joint offerors (“Joint Offerors”) to form a special purpose vehicle (“SPV”) to make a partial offer to all shareholders (including Party A) for 60% of Company X’s total issued share capital. Party A undertakes to tender up to its entire 45% stake in Company X in acceptance of the partial offer.

If the partial offer garners sufficient acceptances and depending on the level of acceptances received, the Joint Offerors could collectively hold between 60% and 78% at the close of the offer:

	Interests of shareholders of Company X at the close of the partial offer	
	Assuming shareholders (other than Party A) tender 15%	Assuming all shareholders (including Party A) tender their full entitlement of 60%
Party A	0% ¹	18% ²
SPV	60%	60%
Aggregated holdings of the Joint Offerors	60%	78%
Other shareholders	40%	22%
Total	100%	100%

The partial offer in the example above is not acceptable as the Joint Offerors could hold a range of shareholding interest in Company X at the close of the offer (i.e. between 60% and

¹ As shareholders other than Party A have tendered 15%, Party A’s undertaking to tender his entire 45% will be accepted by the SPV to satisfy the 60% acceptance condition. As a result, Party A would not retain any shares in Company X.

² As all shareholders have tendered their full entitlement of 60% of their respective holdings, only 60% of Party A’s 45% stake in Company X (27%) will be accepted by the SPV. Party A would therefore retain 18% in Company X.

78%). The SIC would have consented if the partial offer was for 15% of Company X was made to all shareholders other than Party A instead. This would result in the Joint Offerors holding 60% in Company X if the partial offer was successful.

Retirement from, appointments and reappointments to the SIC

Retired members – Mr J Y Pillay (Chairman of the SIC), Mr Chang See Hiang and Mr Lito Camacho.

The Secretariat would like to thank the retired members of the SIC for their invaluable contributions during their tenure on the SIC.

Mr Pillay has served as the Chairman of the SIC since 1 January 2012. Over these six years, Mr Pillay has provided insightful inputs to the SIC and work related to the Code.

Each of Mr Camacho and Mr Chang has served as a member of the SIC for a period of eight and six years respectively. The SIC has benefitted tremendously from their constructive viewpoints and suggestions.

We welcome the following new appointments and reappointments to the SIC with effect from 1 January 2018. With Mr Pillay retiring as Chairman, Mr Koh Boon Hwee has been appointed as the new Chairman of the SIC for a term of two years commencing from 1 January 2018.

New appointments – Mr Benjamin Kan, Mr Stephen Revell and Mrs Tracy Woon.

Reappointments – Mr Koh Boon Hwee (Chairman of the SIC), Mr Cavinder Bull, S.C., Mr Karam Butalia, Ms Chew Gek Khim, Mr Rahul Goswamy, Mr Norman Ip, Mr Eugene Lai, Mr Lee Boon Ngiap (with Ms Abigail Ng as alternate), Mr Olivier Lim, Mr Loh Boon Chye, Prof Hans Tjio and Ms Jeanette Wong.

Members are appointed for a term of two years with effect from 1 January 2018. A full list of the members of the SIC can be found at the “Securities Industry Council” section of the Monetary Authority of Singapore’s website at <http://www.mas.gov.sg/sic>.

Half-yearly statistics on M&A activity

In the six months ended 31 December 2017, there were 22 offers and 6 whitewashes lodged with the SIC.

Useful links

- The Singapore Code on Take-overs and Mergers
http://www.mas.gov.sg/~media/resource/sic/The_Singapore_Code_on_Take_Overs_and_Merger_25%20Mar%202016.pdf
- Securities Industry Council's Website
<http://www.mas.gov.sg/sic>

Our contact details

Securities Industry Council
25th Storey, MAS Building
10 Shenton Way
Singapore 079117
Tel: (65) 62299222
Fax: (65) 62251350
Email: sic@mas.gov.sg

You may send in your feedback and comments via email.

The information in the bulletin is intended as informal guidance and not meant to substitute consultations with the SIC Secretariat on how the Code applies to a particular case.