
TAKE-OVERS BULLETIN

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

ISSUE NO. 7
September 2019

Highlights

- **Welcome Message**
- **Fair and equal treatment in election of alternative considerations**
- **H1 2019 Statistics on M&A activity**

Welcome Message

Welcome to the seventh issue of the SIC Secretariat's Take-overs Bulletin.

In this issue, we remind offerors to be mindful of their obligation to treat offeree company shareholders fairly and equally when implementing an arrangement for offeree company shareholders to elect between alternative considerations.

Fair and equal treatment of all offeree company shareholders should be observed in arrangements to elect alternative considerations

It is not uncommon for offerors to offer securities as an alternative to cash as consideration. It is also not uncommon for offerors to impose rules and restrictions on how offeree company shareholders may choose between the two types of consideration. However, offerors should be mindful that such rules and restrictions or their implementation do not give rise to unequal treatment. In cases of doubt, the SIC Secretariat should be consulted.

In a recent take-over offer via a scheme of arrangement¹, the offeror proposed that an offeree company shareholder could elect either cash or shares in the offeror for all their offeree company shares. The offeree company shareholder could not elect to receive shares in the offeror for some of his shares in the offeree company and cash for the rest of his holdings. If he did so, he would be paid entirely in cash. However, whether an

¹ In a take-over via a scheme of arrangement, the offeror would be entitled to acquire all the shares of the offeree company if the scheme of arrangement is approved by shareholders and sanctioned by the Court.

offeree company shareholder complied with this requirement would be based on whether the elected consideration was for all the offeree company shares in a particular securities account. In other words, shareholders who held shares in different securities accounts would be able to elect to receive shares for some of their offeree company shares and cash for the rest. In fact, one of the major shareholders, who had given an undertaking to vote in favour of the scheme of arrangement, would be electing offeror shares for the offeree shares he had in one securities account and cash for those he had in another. We were of the view that this did not accord fair and equal treatment to offeree company shareholders. Whilst it was argued that offeree company shareholders could similarly set up separate securities accounts in order to receive both cash and shares, the Secretariat was of the view that it was not appropriate for offeree shareholders, in particular, retail investors, to have to do so. The offeror in the implementation of its rules for election of consideration should ensure that all offeree company shareholders are treated fairly and equally without them having to take additional steps.

Half-yearly statistics on M&A activity

In the six months ended 30 June 2019, there were 17 offers and 3 whitewashes lodged with the SIC.

Useful links

- The Singapore Code on Take-overs and Mergers
https://www.mas.gov.sg/-/media/MAS/resource/sic/The_Singapore_Code_on_Take_Over_and_Merger_24-January-2019.pdf?la=en&hash=2C4793999C65A258D65CB413D0301B1F290D7405
- Securities Industry Council's Website
<https://www.mas.gov.sg/securities-industry-council>

Our contact details

Securities Industry Council
24th 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.