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 arrangement, 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

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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

- Securities Industry Council’s Website
  [https://www.mas.gov.sg/securities-industry-council](https://www.mas.gov.sg/securities-industry-council)

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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.