



## SFC Practice Note 24: Receivers, Liquidators and Commencement of Offer Periods

The Executive of the Securities and Futures Commission (**SFC**) issued a new [Practice Note 24 \(PN24\)](#) on 18 November 2022 regarding receivers, liquidators and when to commence offer period(s).

In March 2020, the SFC issued [Takeovers Bulletin No. 52](#) (the **2020 Takeovers Bulletin**) which stated that where an independent receiver or liquidator is appointed over a controlling interest (i.e. 30% or more of the voting rights) in a Hong Kong public company, this will give rise to a possible offer because of the expectation that the receiver or liquidator would act quickly to sell the shares. An offer period would therefore commence as soon as an independent receiver or liquidator took control of 30% or more of the voting rights in a public company. This would trigger the requirement for publication of an announcement of a possible offer under Rule 3.7 of the SFC's Codes on Takeovers and Mergers and Share Buy-backs (the **Hong Kong Takeovers Code**).

Rule 3.7 of the Hong Kong Takeovers Code will be satisfied if either the potential offeror or offeree company makes a brief announcement that talks are taking place or that a potential offeror is considering making an offer. Where no further announcement is made within a month of the first announcement, the potential offeror or offeree company must make a monthly announcement setting out the progress of the talks or the consideration of a possible offer, and must continue to do so until the announcement of a firm intention to make an offer under Rule 3.5 of the Hong Kong Takeovers Code or a decision not to proceed with an offer.

However, since publishing the 2020 Takeovers Bulletin, the Executive has observed that:

- 1) although receivers, liquidators and offeree companies generally complied with the requirement to publish a possible offer announcement under Rule 3.7 of the Hong Kong Takeovers Code, in many cases, the appointment of a receiver or liquidator was not followed by an offer or change of control. In some cases, there were few or no developments for over two years after the appointment of the relevant receiver or liquidator, contrary to the expectation that they would act quickly to sell the shares;
- 2) in many cases, the receiver or liquidator may not, in fact, actively seek or negotiate with a potential purchaser (possibly due to market factors or a lack of interest in the relevant assets). There have also been cases of settlement talks between the lender and borrower; and
- 3) subjecting offeree companies to the various restrictions applicable to them (such as Rule 4 of the Hong Kong Takeovers Code with regards to no frustrating actions) and additional compliance requirements (such as additional reporting on profit forecasts as required by Rule 10.4 of the Hong Kong Takeovers Code), when there are either no substantive developments on a possible offer and no real prospect of an offer, may be unduly burdensome on the offeree company and may not be in the best interests of its shareholders.

In light of the above observations, the Executive considers it inappropriate to keep an offer period open or to commence an offer period where there is unlikely to be an imminent offer. It also notes that this could lead to potential false market concerns for an offeree company. Accordingly, PN24 provides that:

- a) an offer period will not commence upon the appointment of a receiver or liquidator, even if this may result in a possible change of control, unless the receiver or liquidator indicates that it is:
  - (i) actively looking for a potential purchaser for the controlling stake; or
  - (ii) already in a discussion with a potential purchaser over the controlling stake;
- b) the offeree company should make appropriate enquires with the receiver or liquidator as to whether it proposes to sell the controlling stake. If the receiver is actively looking for a potential purchaser, or already in discussion with a potential purchaser over the controlling stake, the offeree company should submit a draft Rule 3.7 announcement to the Executive for vetting. The draft announcement should disclose the appointment of the receiver or liquidator and the reason(s) for commencing an offer period. The offeree company will also be required to publish monthly update announcements in line with existing practice and as required by Rule 3.7 of the Hong Kong Takeovers Code;
- c) where the appointment of a receiver or liquidator does not initially result in the commencement of an offer period, the receiver or liquidator and any future potential purchaser should take all necessary steps to maintain confidentiality of information relating to a possible offer (e.g. negotiations relating to the disposal of the controlling stake) and ensure there is no leakage of information as required by Rule 1.4 of the Hong Kong Takeovers Code. Under Rule 1.4, all persons privy to confidential information, and particularly price-sensitive information, concerning an offer or contemplated offer must treat that information as secret and may only pass it to another person if it is necessary to do so and if the other person understands the need for secrecy. An offer period will thus only commence on the publication of:
  - (i) an announcement of a firm intention to make an offer under Rule 3.5 of the Hong Kong Takeovers Code; or
  - (ii) a “talks” announcement under Rule 3.7 of the Hong Kong Takeovers Code. This should only be issued if an obligation to issue an announcement has arisen under Rule 3.1, Rule 3.2 or Rule 3.3 of the Hong Kong Takeovers Code, for instance where the offeree company is the subject of a rumour or speculation about a possible offer or there is undue movement in its share price<sup>[1]</sup>; and
- d) where the offer period has been open for some time following the appointment of a receiver or liquidator, and the offeree company believes that it is unlikely that an offer will be made imminently, it is encouraged to consult with the Executive to end the offer period.

The Practice Note will not affect a party's obligation to disclose information which is inside information under Part XIVA of Hong Kong's Securities and Futures Ordinance.

---

[1] Rule 3.2(b)

### This newsletter is for information purposes only

Its contents do not constitute legal advice and it should not be regarded as a substitute for detailed advice in individual cases. Transmission of this information is not intended to create and receipt does not constitute a lawyer-client relationship between Charltons and the user or browser. Charltons is not responsible for any third party content which can be accessed through the website.

If you do not wish to receive this newsletter please let us know by emailing us at [unsubscribe@charltonslaw.com](mailto:unsubscribe@charltonslaw.com)

CHARLTONS  
易周律師行

Hong Kong Office

Dominion Centre 12th Floor  
43-59 Queen's Road East Hong Kong

[enquiries@charltonslaw.com](mailto:enquiries@charltonslaw.com)

[www.charltonslaw.com](http://www.charltonslaw.com)  
Tel: + (852) 2905 7888  
Fax: + (852) 2854 9596