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[online version](http://www.charltonslaw.com/revised-practice-note-15-in-latest-sfc-takeovers-bulletin/)

# Revised Practice Note 15 in latest SFC Takeovers Bulletin

Highlights of the latest SFC Takeovers Bulletin (Issue No. 12, March 2010) (the "Takeovers Bulletin") are set out below

## 1. Revised Practice Note 15 - Confirmation of financial resources in cash offers

The Takeovers Bulletin sets out a revised Practice Note 15 that clarifies the Executive's practice regarding confirmation of sufficiency of financial resources. As a matter of practice, the financial adviser to the offeror is required to provide the Executive with a signed letter that:

1. confirms that the financial adviser is satisfied that there are sufficient resources available to satisfy the offer in full;
2. sets out the basis for the financial adviser's confirmation and details of the due diligence steps taken by the financial adviser (including but not limited to a list of the documents that it has reviewed) in satisfying itself that sufficient financial resources are and will be available; and
3. confirms, where relevant, that no subjective conditions are attached to the financing.

The financial adviser is not required to provide the Executive with related loan documentation or other documentation unless it is requested by the Executive. The Executive should be consulted as soon as possible should cases of difficulty arise.

Market practitioners are reminded that it is the sole responsibility of financial advisers to ensure that there are sufficient financial resources available to satisfy an offeror's obligations to an offer. Financial advisers should observe the highest standard of care to satisfy themselves of the sufficiency of financial resources.

The revised Practice Note 15 is available [here](http://www.sfc.hk/sfc/doc/EN/cfd/mergers/practice_note/PN15%28E%29_310310.pdf).

## 2. Reminder of the importance of maintaining proper compliance and monitoring systems

General Principle 1, provides that in an offer, all shareholders are to be treated even-handedly and all shareholders of the same class are to be treated similarly. Therefore, during an offer period, the Codes impose certain prohibitions, restrictions and obligations on dealings by parties involved in an offer and persons acting in concert with them.

Pursuant to class (5) of the definition of acting in concert, the financial and other professional advisers to corporate clients are presumed to be acting in concert with those clients. For advisers who are part of a multi-service organization, the presumption extends to all entities within that group, including its fund managers and principal traders (connected fund managers and principal traders) unless exempt status has been granted according to [Practice Note 9](http://www.sfc.hk/sfc/doc/EN/cfd/mergers/practice_note/PN09_eng_29.12.08.pdf).

It is noted that numerous difficulties in complying with the dealing restrictions and disclosure provisions imposed by Rule 21 and Rule 22 of the Takeovers Code were primarily due to human error and avoidable. Financial advisers should be reminded of the potential serious consequences of dealings by connected parties under the Codes and the importance of maintaining proper compliance and monitoring systems to ensure compliance with the Codes.

## 3. Consultation Paper on the proposal to extend the application of the Codes to REITs closed on 8 March 2010

(please refer to the Takeovers Bulletin); and

## 4. Reappointments to the Takeovers and Mergers Panel, the Takeovers Appeal Committee, the Nominations Committee and the Disciplinary Chair Committee (please refer to the Takeovers Bulletin).

The Takeovers Bulletin is available on [the SFC website](http://www.sfc.hk) or [here](http://www.sfc.hk/sfc/doc/EN/cfd/mergers/takeovers_bulletin/10/mar_10.pdf).

*The purpose of this newsletter is to provide a summary only of information included in the SFC's "Takeovers Bulletin (Issue No. 12, March 2010)". Its contents do not constitute legal advice and specific advice should be sought in relation to any particular situation.*

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