

# The Cayman Islands Stock Exchange

## Code on Takeovers and Mergers and Rules Governing Substantial Acquisitions of Shares

The Cayman Islands Stock Exchange  
P.O. Box 2408GT  
Grand Cayman  
Cayman Islands

Telephone: (345) 945 6060  
FAX: (345) 945 6061  
Email: [csx@csx.com.ky](mailto:csx@csx.com.ky)  
Web Site: [WWW.CSX.COM.KY](http://WWW.CSX.COM.KY)



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# INTRODUCTION AND DEFINITIONS

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## 1. THE CODE

### **1.1 NATURE AND PURPOSE OF THE CODE**

The Cayman Islands Stock Exchange Code on Takeovers and Mergers (the "Code") is issued by the Cayman Islands Stock Exchange (the "CSX").

The Code and the CSX operate principally to ensure fair and equal treatment of all shareholders in relation to takeovers. The Code also provides an orderly framework within which takeovers are conducted. The Code is not concerned with the financial or commercial advantages or disadvantages of a takeover. These are matters for the company and its shareholders.

Those who do not conduct themselves in accordance with the provisions of the Code may be sanctioned and may find that the facilities of the CSX markets are withdrawn.

### **1.2 CODE RESPONSIBILITIES**

The responsibilities described in the Code apply most directly to those who are actively engaged in the securities markets. They are also regarded as applying to directors of companies which are subject to the Code and to persons or groups of persons who seek to gain or consolidate effective control of such companies or who otherwise participate in, or are connected with, transactions to which the Code applies. They also apply to all professional advisers, insofar as they advise on the transactions in question. The CSX also expects any other persons who issue circulars to shareholders in connection with takeovers to observe the highest standards of care.

### **1.3 ENACTMENT OF THE CODE**

The Code is made pursuant to Section 11(2) of The Cayman Islands Stock Exchange Companies Law, 1996 (the "CSX Law").

## **1.4 THE COUNCIL EXECUTIVE**

Pursuant to the CSX Law, a Council has been appointed by the Stock Exchange Authority, the CSX's regulator, to administer the affairs of the CSX. The Council works on a day-to-day basis through the staff of the CSX headed by the Chief Executive Officer (the "Council Executive"). The Council Executive is responsible for the general administration of the Code. This includes, either on its own initiative or at the instigation of third parties, the conduct of investigations, the monitoring of relevant dealings in connection with the Code, and the taking of disciplinary action.

## 2. THE CODE IN PRACTICE

### 2.1 GENERAL PRINCIPLES AND RULES

The Code is based upon a number of General Principles, which are essentially statements of good standards of commercial behaviour. These General Principles apply to all transactions with which the Code is concerned. They are, however, expressed in broad general terms and the Code does not define the precise extent of, or the limitations on, their application. They are applied by the Council Executive in accordance with their spirit to achieve their underlying purpose; the Council may modify or relax the effect of their precise wording accordingly. In addition to the General Principles, the Code contains a series of Rules, of which some are effectively expansions of the General Principles and examples of their application, and others are provisions governing specific aspects of takeover procedure. Although most of the Rules are expressed in more detailed language than the General Principles, they are not framed in technical language and, like the General Principles, are to be interpreted to achieve their underlying purpose. Therefore, their spirit must be observed as well as their letter and the Council Executive may modify or relax the application of a Rule if it considers that, in the particular circumstances of the case, it would operate unduly harshly or in an unnecessarily restrictive or burdensome, or otherwise inappropriate, manner.

### 2.2 CONSULTING THE COUNCIL EXECUTIVE

When there is any doubt whatsoever as to whether a proposed course of conduct is in accordance with the General Principles or the Rules, parties or their advisers should consult the Council Executive in advance to obtain a view or ruling. In this way, the parties can obtain clarification of the basis on which they can properly proceed and thus minimise the risk of taking action which might, in the event, result in a breach of the Code.

Both principals and their advisers are encouraged to make full use of this service. To take legal or other professional advice on the interpretation or application of the Code is not an appropriate alternative to obtaining a view or ruling.

A ruling on the application of the Code is generally given in the first place by the Council Executive. In some cases, however, it may not be possible for a ruling to be given unless the Council Executive is able to hear the views of other parties involved.

The Council Executive may refer a matter to the Council for decision without itself giving a ruling when it considers that there is a particularly unusual, important or difficult point at issue.

The Council expects prompt co-operation from those to whom enquiries are directed so that decisions may be both properly informed and given as speedily as possible.

### **2.3 DISCIPLINARY PROCEEDINGS**

The Council Executive may institute disciplinary proceedings when it considers that there has been a breach of the Code.

The relevant party will be informed in writing of the alleged breach and the proposed action of the Council Executive. He will be given an opportunity to make a written representation as to the alleged breach and the proposed disciplinary action.

The Council Executive may take the following disciplinary action if it finds that there has been a breach of the Code:

- (a) private reprimand;
- (b) public censure;
- (c) reporting the offender's conduct to another regulatory authority;
- (d) withdrawing the facilities of the CSX markets; and/or
- (e) requiring further action to be taken as it thinks fit.

### **2.4 APPEALS TO THE APPEAL COMMITTEE OF THE COUNCIL**

If a party or his adviser wishes to contest a ruling of the Council Executive or the Council, he may ask for the matter to be reviewed by the Appeal Committee of the Council. The quorum for a meeting of the Appeal Committee is three. Such meeting may be convened at short notice. The same right is also given to an aggrieved shareholder. The Council Executive will stipulate the time within which any appeal must be notified, which will normally be three days.

### **2.5 APPEAL COMMITTEE**

At hearings of the Appeal Committee of the Council, the Chairman of the Appeal Committee, who will be appointed from amongst its members, will determine whether the case is presented in person by the parties or their advisers or by way of a written submission. In the case of an oral hearing, formal legal representation will not normally be permitted. Normally, whether the case is to be heard orally or by way of written representations, each party shall set out its case briefly in writing beforehand. In the case of an oral hearing, the parties are permitted to call such witnesses as may give relevant and material evidence. Similarly, in a case where written representations are made, written submissions from witnesses will be accepted by the Appeal

Committee. There are no rules of evidence other than those requisite to ensure fairness. All rulings shall be confirmed in writing.

All parties are entitled to see all papers submitted to the Appeal Committee. Occasionally, however, a party may wish to present evidence to the Appeal Committee which is of a confidential commercial nature. In such exceptional cases, the Appeal Committee may, if it is satisfied that such course is justified, be prepared to admit the evidence in question in the absence of it having been circulated to the other parties in advance. Representations by shareholders may also be presented in writing to the Appeal Committee.

The Appeal Committee recognises that its authority can only be sustained if its impartiality is beyond doubt. Accordingly, where a matter is likely to create a conflict of interest for any member of the Appeal Committee, such member will not attend.

The Council Executive will normally suspend any disciplinary action until after the decision of the Appeal Committee, although an appropriate interim announcement may have to be made. If there is no appeal, any publication by the Council Executive will follow immediately upon the expiration of the period within which any appeal may have been made.

If an appeal is upheld, the appellant is consulted on the form of statement, if any, which is to be published. If an appeal is dismissed, normally the findings of the Appeal Committee are published and any steps decided upon by way of action implemented. In either case, the Appeal Committee may make any further comment it thinks fit.

## **2.6 PROCEDURAL DIRECTIONS**

On the application of any party or of the Council Executive, the Chairman of the Appeal Committee, sitting alone, may give such procedural directions as he considers appropriate for the determination of a case.

## 3. COMPANIES AND TRANSACTIONS TO WHICH THE CODE APPLIES

### 3.1 COMPANIES

The Code applies to all companies listed on the CSX other than open-ended mutual funds.

### 3.2 TRANSACTIONS

The Code is concerned with takeover and merger transactions, however effected, of all listed companies; these include partial offers, offers by a parent company for shares in its subsidiary and certain other transactions where control of a company (as defined) is to be obtained or consolidated. References in the Code to "takeovers" and "offers" include, where appropriate, all such transactions. The Code does not apply to offers for non-voting, non-equity capital unless they are offers required by Rule 12.

### 3.3 DUAL JURISDICTION

Where a listed company is subject to primary regulation by a recognised stock exchange as defined in the CSX listing rules and where such primary regulatory exchange ("PRE") has any provisions governing takeover and merger transactions imposed by the PRE or the law and regulation of the jurisdiction within which the company or the PRE is situated then, as a general rule, such provisions or law and regulation will be deemed to govern the conduct of any such transaction and the provisions of this Code shall not apply.

Further if the law and regulations of the jurisdiction within which the listed company is domiciled or in which the PRE is situated, has law or regulation governing takeover and merger transactions which apply to the listed company and/or the relevant transaction then, as a general rule, such law and regulation will be deemed to govern the conduct of such transaction and the provisions of this Code shall not apply.

Where Code transactions are subject to the dual jurisdiction of the Council and an overseas takeover regulator, early consultation with the Council Executive is strongly recommended so that guidance can be given on how any conflicts between the relevant requirements may be resolved.

## 4. DEFINITIONS

### 4.1 ACTING IN CONCERT

Persons acting in concert comprise persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, for the purpose of entering into or proposing an affected transaction.

Without prejudice to the general application of this definition, the following persons will be presumed to be persons acting in concert with other persons in the same category unless the contrary is established:-

- (a) any of the following with each other: a company, its parent, subsidiaries and fellow subsidiaries, and their associated companies, and companies of which such companies are associated companies, (for this purpose ownership or control of 20% or more of the equity share capital of a company is regarded as the test of associated company status);
- (b) a company with any of its directors (together with their close relatives and related trusts);
- (c) a company with any of its pension funds;
- (d) a fund manager with any mutual fund or other person whose investments such fund manager manages on a discretionary basis, in respect of the relevant investment accounts;
- (e) a financial or other professional adviser (including a stockbroker) with its client in respect of the shareholdings of the adviser and persons controlling, controlled by or under the same control as the adviser; and
- (f) directors of a company which is subject to an offer or where the directors have reason to believe a bona fide offer for their company may be imminent.

### 4.2 AFFECTED TRANSACTION

Any transaction where control of a company is to be obtained or consolidated. Consolidation of control is described in Rule 8 as where more than 1% of the voting rights are added to an existing stake of between 30% and 50% in any period of twelve months by any person or persons acting in concert.

### **4.3 BUSINESS DAY**

A day on which the CSX is open for the transaction of business.

### **4.4 ASSOCIATE**

It is not practicable to define associate in terms which would cover all the different relationships which may exist in an offer. The term associate is intended to cover all persons (whether or not acting in concert) who directly or indirectly own or deal in the shares of an offeror or the offeree company in an offer and who have (in addition to their normal interests as shareholders) an interest or potential interest, whether commercial, financial or personal, in the outcome of the offer.

### **4.5 CASH PURCHASES**

Purchases for cash include contracts or arrangements where the consideration consists of a debt instrument capable of being redeemed in less than 3 years.

### **4.6 CONNECTED FUND MANAGERS AND STOCKBROKERS**

A fund manager or stockbroker will be connected with an offeror or the offeree company, as the case may be, if the fund manager and/or stockbroker is controlled by, controls or is under the same control as:-

- (a) an offeror;
- (b) the offeree company;
- (c) any bank or financial or other professional advisers to an offeror or the offeree company; or
- (d) an investor in a consortium (eg through a vehicle company formed for the purpose of making an offer).

### **4.7 CONTROL**

Control means a holding, or aggregate holdings, of shares carrying 30% or more of the voting rights (as defined below) of a company, irrespective of whether the holding or holdings give de facto control.

### **4.8 CSX NEWS SERVICE**

The medium used by the CSX for dissemination of information.

#### **4.9 DATE, DAY AND PERIOD OF TIME**

Unless otherwise stated in the Code:-

- (a) a reference to the date of an event is to the time of occurrence of the event on the day in question;
- (b) a business day is a day on which the CSX is open for the transaction of business; and
- (c) where a period of time is calculated from a stated event, the day on which that event occurs should be excluded from the calculation of the period (this is not relevant to the definition of an offer period).

#### **4.10 DERIVATIVE**

Derivative includes any financial product whose value in whole or in part is determined directly or indirectly by reference to the price of an underlying security but which does not include the possibility of delivery of such underlying securities.

#### **4.11 DIRECTORS**

Directors include persons in accordance with whose instructions the directors or a director are accustomed to act.

#### **4.12 OFFER**

Offer includes, wherever appropriate, takeover and merger transactions however effected, including reverse takeovers, partial offers, and also offers by a parent company for shares in its subsidiary.

#### **4.13 OFFEREE COMPANY**

Any listed company, the shares or part of the shares of which are, or are to be, the subject of any affected transaction or proposed affected transaction.

#### **4.14 OFFEROR**

Offeror includes companies wherever incorporated and individuals wherever resident.

#### **4.15 OFFER PERIOD**

Offer period means the period from the time when an announcement is made of a proposed or possible offer (with or without terms) until the first closing date or, if this is later, the date when the offer becomes or is declared unconditional as to acceptances or lapses. An announcement that a holding, or aggregate holdings, of shares carrying 30% or more of the voting rights of a company is for sale or that the board of a company is seeking potential offerors will be treated as the announcement of a possible offer.

#### **4.16 PRESS**

The Caymanian Compass and any international news media as the CSX may determine from time to time.

#### **4.17 PURCHASES OR OTHER ACQUISITIONS OF SHARES**

Purchases or other acquisitions of shares, where relevant, include purchases of shares assented to an offer.

#### **4.18 RIGHTS OVER SHARES**

Rights over shares include any rights acquired by a person by virtue of an agreement to purchase shares or an option to acquire shares or an irrevocable commitment to accept an offer to be made by him or an agreement to acquire voting rights or general control of them.

#### **4.19 SECURITIES EXCHANGE OFFER**

Securities exchange offer means an offer in which the consideration includes securities of the offeror, other than loan stock or loan notes (unless such stock or notes carry substantially the same rights as any other securities of the offeror in issue or conversion or subscription rights into any such securities or into equity share capital of the offeror).

#### **4.20 VOTING RIGHTS**

Except for the purposes of Rule 8.7, voting rights means all the voting rights attributable to the share capital of a company which are currently exercisable at a general meeting.

# GENERAL PRINCIPLES

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1. All shareholders of the same class of an offeree company must be treated similarly by an offeror.
2. During the course of an offer, or when an offer is in contemplation, neither an offeror, nor the offeree company, nor any of their respective advisers may furnish information to some shareholders which is not available to all shareholders. This principle does not apply to the furnishing of information in confidence by the offeree company to a bona fide potential offeror or vice versa.
3. An offeror should only announce an offer after the most careful and responsible consideration. Such an announcement should be made only when the offeror has every reason to believe that it can and will continue to be able to implement the offer. Responsibility in this connection also rests on the financial advisor to the offeror.
4. Shareholders must be given sufficient information and advice to enable them to reach a properly informed decision and must have sufficient time to do so. No relevant information should be withheld from them.
5. Any document or advertisement addressed to shareholders containing information or advice from an offeror or the board or the offeree company or their respective advisers must be prepared with the highest standards of care and accuracy.
6. All parties to an offer must use every endeavour to prevent the creation of a false market in the securities of an offeror or the shares of the offeree company. Parties involved in offers must take care that statements are not made which may mislead shareholders or the market.
7. At no time after a bona fide offer has been communicated to the board of the offeree company, or after the board of the offeree company has reason to believe that such an offer might be imminent, may any action be taken by the board of the offeree company, without the approval of the shareholders in general meeting, which could effectively result in any bona fide offer being frustrated or in the shareholders being denied an opportunity to decide on its merits.
8. Rights of control must be exercised in good faith and the oppression of a minority is wholly unacceptable.
9. Directors of an offeror and the offeree company must always, in advising their shareholders, act only in their capacity as directors and not have regard to their personal or family shareholdings or to their personal relationships with the companies. It is the shareholders' interests taken as a whole, together with those of employees and creditors, which should be considered when directors are giving advice to shareholders. Directors of the offeree company should give careful consideration before they enter

into any commitment with an offeror (or anyone else) which would restrict their freedom to advise their shareholders in the future. Such commitments may give rise to conflicts of interest or result in a breach of the directors' fiduciary duties.

10. Where a person (or persons acting in concert) acquires control of a company, a general offer to all other shareholders is normally required; a similar obligation may arise if control is consolidated. Where an acquisition is contemplated as a result of which a person may incur such an obligation, he must, before making the acquisition, ensure that he can and will be able to continue to be able to implement such an offer.

# RULES RELATING TO TAKEOVERS AND MERGERS

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## 1. THE APPROACH

- 1.1 The offer, when made, shall be put forward to the board of the offeree company or to its authorised advisers.
- 1.2 If the offer, or an approach with a view to an offer being made, is not made by the ultimate offeror or potential offeror, the identity of that person shall be disclosed when the offer is put forward to the board of the offeree company or to its authorised advisers.
- 1.3 A board so approached is entitled to be satisfied on reasonable grounds that the offeror is, or will be, in a position to implement the offer in full.

## 2. SECRECY BEFORE ANNOUNCEMENTS; THE TIMING AND CONTENTS OF ANNOUNCEMENTS

### 2.1 SECRECY

Secrecy shall be observed before the announcement of a firm intention to make an offer. All persons privy to confidential information, price-sensitive or otherwise, concerning an offer or contemplated offer shall treat that information as secret.

All persons concerned in an offer or contemplated offer shall conduct themselves so as to minimise the chances of an accidental leak of information. Accordingly, the Council Executive must be given not less than 24 hours' prior written notice of the issue of any news releases under embargo.

### 2.2 INSIDER DEALING

Organisations involved in takeovers must take reasonable steps, including the establishment and maintenance of procedures, to ensure that its employees do not act upon inside information, by:

- (a) dealing, or encouraging a person to deal (whether knowingly or not) in price affected securities, either on or off the CSX or any other exchange except where:
  - (i) the employee did not at the time expect the dealing to result in a profit attributable to the fact that the information was price sensitive;
  - (ii) the employee believed, at the time, on reasonable grounds, that the information had been disclosed widely enough to ensure that none of those taking part in the dealing would be prejudiced by not having the information;
  - (iii) the action taken would have been the same even without the possession of information;
  - (iv) the information is market information and it was reasonable for the person to have acted in that way;
- (b) disclosing the information other than in the proper performance of the functions of the employees' employment, except where:
  - (i) the employee did not at the time, because of disclosure, expect any person to deal in a price affected security;
  - (ii) the employee did not expect, at the time, that the dealing would result in a profit attributable to the fact that the information was price sensitive information.

- (c) for the purposes of this guidance, an employee has inside information if and only if:
  - (i) the information is inside information and the employee knows it is inside information; and
  - (ii) the employee has it and knows that it was obtained from an inside source.

### **2.3 THE CAUTIONARY ANNOUNCEMENT - DEFINITIONS AND CONTENTS**

- (a) A cautionary announcement is a brief announcement to be published on the CSX's News Service and in the press which is intended to preserve the integrity of trading in a company's shares on the CSX, or any other exchange upon which the company's shares are traded, preceding or during negotiations which may lead to an announcement of a firm intention to make an offer.
- (b) It may be couched in general terms and would normally state that talks are taking place or that a potential offeror is considering making an offer or that an announcement is pending which could have a material effect on the price of the offeror's or the offeree company's shares. It shall state that the shareholders concerned are advised to exercise caution in dealing in their shares. The potential offeror must be named in the cautionary announcement unless the Council Executive Rules otherwise.

### **2.4 WHEN A CAUTIONARY ANNOUNCEMENT SHALL BE MADE**

- (a) A cautionary announcement shall be made when an offer is under discussion and:
  - (i) the offeree company is the subject of rumour and speculation or there is an abnormal movement in the price of the offeree company's shares traded on the CSX or any other exchange; or
  - (ii) negotiations or discussions are about to be extended to include more than a very restricted number of persons (outside those in the companies concerned who need to know and their immediate advisers).

### **2.5 THE ANNOUNCEMENT OF A FIRM INTENTION TO MAKE AN OFFER**

- (a) An announcement of a firm intention to make an offer is an announcement published on the CSX's News Service and in the press which contains the information set out in Rule 2.7.

- (b) An offeror shall not take any action which would give rise to the requirement to make an announcement of a firm intention to make an offer unless the offeror and its financial adviser have proper grounds for believing that the offeror is and will continue to be able to implement the offer.

## **2.6 WHEN AN ANNOUNCEMENT OF A FIRM INTENTION TO MAKE AN OFFER SHALL BE MADE**

An announcement of a firm intention to make an offer shall be made:

- (a) when the board of the offeree company has been notified in writing of a firm intention to make an offer from a serious source, irrespective of the attitude of the board to the offer;
- (b) immediately upon an acquisition of shares which gives rise to an obligation to make a mandatory offer under Rule 8.

The announcement shall not be delayed while full information is being obtained. Additional information can be the subject of a later supplementary announcement.

## **2.7 THE CONTENTS OF AN ANNOUNCEMENT OF A FIRM INTENTION TO MAKE AN OFFER**

- (a) The announcement of a firm intention to make an offer shall contain:
  - (i) the terms of the offer;
  - (ii) the identity of the offeror;
  - (iii) details of any existing holding of shares in the offeree company:
    - which the offeror owns or over which it has control;
    - which is owned or controlled by any person acting in concert with the offeror or in respect of which the offeror has received an irrevocable commitment to accept the offer;
    - in respect of which the offeror holds an option to purchase; and
    - in respect of which any person acting in concert with the offeror holds an option to purchase;
  - (iv) all material conditions (including normal conditions relating to acceptances, listing and increase of capital) to which the offer or the posting of it is to be subject; and
  - (v) details of any arrangement which exists with any offeror, with the offeree company or with any person acting in concert with the offeror or with the offeree company in relation to relevant shares, whether or not any dealings have taken place.

- (b) The announcement of a firm intention to make an offer containing a wholly or partial cash consideration shall include confirmation by the financial adviser or by another appropriate third party that resources are available to the offeror sufficient to satisfy full acceptance of the offer. Except with the consent of the Council Executive, the confirming party shall be expected to produce the cash itself if, in giving the confirmation, it acted irresponsibly or failed to take all reasonable steps to assure itself that the cash was available.

## **2.8 CONSEQUENCES OF THE ANNOUNCEMENT OF A FIRM INTENTION TO MAKE AN OFFER**

When there has been an announcement of a firm intention to make an offer, the offeror shall, except with the consent of the Council Executive, proceed with the offer unless the posting of the offer is subject to the prior fulfilment of a previously disclosed specific condition and that condition has not been fulfilled.

## **2.9 RESPONSIBILITY FOR MAKING ANNOUNCEMENTS AND MEDIUM FOR PUBLICATION**

- (a) The responsibility for making an announcement under:
  - (i) Rule 2.3 rests with the offeror and the offeree company depending on the circumstances.
  - (ii) Rule 2.6(a) rests with the offeree company.
  - (iii) Rule 2.6(b) rests with the offeror.
- (b) Announcements shall be published on the CSX News Service and in the press as defined, following consultation with the Council Executive who may require such announcements to be published in such jurisdictions as it deems necessary to protect the interests of shareholders.

## 3. INVESTMENT ADVICE

### 3.1 BOARD OF THE OFFEREE COMPANY

The Board of the offeree company shall obtain appropriate external advice on any offer as to how it affects all shareholders, including specifically, where applicable, minority shareholders, and the substance of such advice shall be made known to holders of the relevant shares in the offeree company in a form and manner approved by the Council Executive.

### 3.2 BOARD OF AN OFFEROR COMPANY

The board of an offeror company shall obtain appropriate external advice on an offer when the offer being made is a reverse take-over or when the directors are faced with a conflict of interest. The substance of such advice shall be made known to holders of relevant shares in the offeror company in a form and manner approved by the Council Executive.

### 3.3 DISQUALIFIED ADVISERS

- (a) The Council Executive will not regard as an appropriate external adviser:
- (i) any person who is not a practising member of an appropriate professional body or association; or
  - (ii) to the board of the offeree company and, where applicable, its minority shareholders, any person who holds any office or appointment in or in relation to the offeror; or
  - (iii) to the board of the offeror company, any person who holds any office or appointment in or in relation to the offeree company; or
  - (iv) any person who has any material conflict of interest in respect of the offeror;

provided that this Rule may be relaxed in appropriate cases with the approval of the Council Executive and on such conditions as it may impose.

- (b) Where the advice concerned is given by an external adviser who has an interest and that interest does not give rise to a material conflict of interest or the Rule has been relaxed on the terms set out above, the nature and extent of that interest shall be disclosed in a form and manner approved by the Council Executive in the offer documents issued under Rule 21 or the offeree board circulars issued in terms of Rule 22, as the case may be.

### **3.4 SECOND OPINIONS**

Notwithstanding any prior approval given by the Council Executive, the Council Executive may at any time either itself or in response to written representations by holders of relevant shares require the appointment by either or both of the offeror and the offeree company of further appropriate external advisers approved by the Council Executive to report on the offer concerned in the same form and manner as required in terms of Rules 3.1 and 3.2 and subject to Rule 3.3.

## 4. DEALINGS AND RESTRICTIONS ON THE ACQUISITION OF SHARES AND RIGHTS OVER SHARES

### **4.1 PROHIBITED DEALINGS BEFORE AND DURING THE OFFER BY THE OFFEROR AND CONCERT PARTIES**

During an offer period, the offeror and persons acting in concert with it shall not sell any shares in the offeree company except with the prior consent of the Council Executive and following 24 hours' public notice that such sales might be made. The Council Executive will not give consent for sales where a mandatory offer under Rule 8 is being made. Sales below the value of the offer will not be permitted. After there has been an announcement that sales may be made, neither the offeror nor persons acting in concert with it shall make further purchases.

## 5. ACQUISITIONS RESULTING IN AN OBLIGATION TO OFFER A MINIMUM LEVEL OF CONSIDERATION

### 5.1 ACQUISITION BEFORE AN OFFER PERIOD

When an offeror or any person acting in concert with it has acquired relevant shares in the offeree company:

- (a) within the three month period prior to the commencement of the offer period, and otherwise than with the consent of the Council Executive;
- (b) prior to the three month period referred to in (a), if in the view of the Council Executive there are circumstances which render such a course necessary in order to give effect to General Principle 1,

the offer to the holders of relevant shares of the same class shall be on terms similar to the most favourable of such acquisitions.

### 5.2 ACQUISITIONS AT ABOVE THE OFFER PRICE

- (a) If, after the commencement of the offer period and before the offer closes for acceptance, an offeror or any person acting in concert with it purchases relevant shares in the offeree company at above the offer price (being the then current offer price), it shall increase its offer to not less than the highest price paid for the shares so acquired;
- (b) immediately after the acquisition, an announcement is required that a revised offer will be made in accordance with this Rule (see also Rule 30). The announcement shall also state the number of shares acquired and the price paid.

## 6. CONSEQUENCES OF CERTAIN DEALINGS

### **6.1 IMMEDIATE ANNOUNCEMENT REQUIRED IF THE OFFER HAS TO BE AMENDED**

Acquisitions of offeree company shares by an offeror or any person acting in concert with it may give rise to obligations under Rule 5 (requirement to offer a minimum level of consideration), or Rule 8 (mandatory offer) or Rule 9 (cash offer). Immediately after such an acquisition, an appropriate announcement shall be made. Whenever practicable, the announcement shall also state the number of shares acquired and the consideration therefor.

### **6.2 DEALINGS BY CONCERT PARTIES OF THE OFFEROR DURING AN OFFER PERIOD**

Any person who manages an investment account and who is a concert party of the offeror shall make prompt disclosure to the Council Executive of dealings during the offer period in relevant securities of the offeror or shares of the offeree company.

When obligations under, or infringements of, the above mentioned Rules could arise, the persons concerned shall consult the Council Executive before dealing in securities of an offeror or the shares of the offeree company. The Council Executive may determine whether or not disclosure, as prescribed in Rule 7.1(a), is required.

## 7. PUBLIC DISCLOSURE OF DEALINGS DURING THE OFFER PERIOD

### 7.1 DEALINGS BY PARTIES AND CONCERT PARTIES FOR THEMSELVES OR FOR CLIENTS

- (a) Dealings in relevant securities of the offeror or the shares of the offeree company by an offeror or the offeree company, and by any concert party, for their own account during an offer period shall be disclosed forthwith by the party concerned to the Council Executive for dissemination by the CSX.
- (b) Dealings in relevant securities of the offeror or shares of the offeree company by an offeror or the offeree company, and by any concert party, for the account of clients during an offer period shall be disclosed forthwith by the party concerned as aforesaid. The names of clients need not be disclosed. In the case of investment accounts managed on a discretionary basis, relevant securities or shares so managed will be treated, for the purpose of this Rule, as controlled by that manager and not by the person on whose behalf the relevant securities or shares are managed.

A specimen disclosure form is contained in Appendix 1. Disclosures under this Rule should follow that format.

## 8. THE MANDATORY OFFER AND ITS TERMS

### 8.1 WHEN IT IS REQUIRED AND WHO IS PRIMARILY RESPONSIBLE FOR MAKING IT

- (a) when any person acquires, whether by a series of transactions over a period of time or otherwise, shares which (taken together with shares already held by such person or held or acquired by persons acting in concert with him) carry 30% or more of the voting rights of a company; or
- (b) any person who, together with persons acting in concert with him, holds not less than the 30% but not more than 50% of the voting rights of a company and such person, or any person acting in concert with him, acquires in any period of 12 months additional shares carrying more than 1% of the voting rights,

such person shall, unless the Council Executive Rules otherwise, extend offers to the holders of any class of equity capital, whether voting or non-voting, and also to the holders of any class of voting non-equity capital of which such person or persons acting in concert with him hold shares. Offers for different classes of equity capital shall be fair and appropriate, having regard to current circumstances and the Council Executive shall be consulted in advance in such cases.

### 8.2 OBLIGATIONS OF OTHER PERSONS

In addition to the person specified in Rule 8.1, each of the members of a group of persons acting in concert with him shall, according to the circumstances of the case, have the obligation to extend a mandatory offer in accordance with this Rule.

### 8.3 CONDITIONS AND CONSENTS

An acquisition of shares which would give rise to a requirement for a mandatory offer under this Rule may be made notwithstanding the fact that the making or implementation of such offer would or might be dependent on the passing of a resolution at any meeting of shareholders of the offeror or upon any other conditions, consents or arrangements, provided that the foregoing are clearly communicated to all relevant parties.

### 8.4 CONSIDERATION TO BE OFFERED

- (a) offers made under this Rule shall, in respect of each class of shares involved, be in cash or be accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert

with it for shares of that class within the preceding 12 months. The offer and any cash alternative shall remain open after the offer has become or is declared unconditional as to acceptances for not less than 21 days after the date on which it would otherwise have expired (see Rule 28.4). The Council Executive shall be consulted where there is more than one class of shares involved.

- (b) If the offeror considers that the highest price should not apply in a particular case, the offeror shall consult the Council Executive, which may in its discretion agree to an adjusted price.

## **8.5 OBLIGATIONS OF DIRECTORS SELLING SHARES**

When directors of a company sell shares owned or controlled by them in that company to an identifiable purchaser as a result of which the purchaser is required to make an offer under this Rule, such directors shall stipulate as a condition of the sale that the purchaser undertakes to fulfil his obligations under the Rule. In addition, except with the consent of the Council Executive, such directors shall not resign from the board until the first closing date of the offer or the date upon which the offer becomes or is declared unconditional, whichever is the later.

## **8.6 RESTRICTIONS ON EXERCISE OF CONTROL BY AN OFFEROR**

Except with the consent of the Council Executive, no nominee of an offeror or persons acting in concert with it shall be appointed to the board of the offeree company, nor shall an offeror and persons acting in concert with it exercise the votes attaching to any shares held in the offeree company, until the offer document has been posted.

## **8.7 VOTE OF INDEPENDENT SHAREHOLDERS ON THE ISSUE OF NEW SHARES**

When the issue of new shares as consideration for an acquisition or a cash subscription would otherwise result in an obligation to make a mandatory offer under this Rule, the Council Executive will normally dispense with such obligation if there is a waiver thereof by a majority of independent votes at a meeting of the holders of relevant shares. The requirement for a mandatory offer will also be dispensed with, provided there has been a majority of independent votes at a properly constituted meeting of holders of relevant shares, in cases involving the underwriting of an issue of shares. The Council Executive may in its discretion grant a dispensation in cases where an underwriter incurs an obligation under this Rule unexpectedly, for example as a result of an inability to obtain sub-underwriters for all or part of his liability.

When a person or group of persons acting in concert may, as a result of such arrangements, come to control more than 49% of the voting rights of the company (and so have the freedom to move to 50% or more without incurring an obligation

to make a mandatory offer under these Rules), the offer document shall contain specific and prominent reference to that possibility and to the fact that the holders of the controlling interest will be able to exercise their control and increase their overall interest without incurring any further obligation under Rule 8.1 to make a mandatory offer.

Notwithstanding the fact that, at a general meeting of the company, the issue of new shares is made conditional upon the prior approval of a majority of votes of the holders of the relevant shares independent of the transaction:

- (a) the Council Executive will not normally dispense with an obligation under this Rule if the person to whom the new shares are to be issued or any persons acting in concert with him have acquired relevant shares in the offeree company in the 12 months prior to the posting of the circular but subsequent to negotiations, discussions or the reaching of understandings or agreements with the directors of the offeree company in relation to the proposed issue of new shares;
- (b) a waiver by independent votes shall be invalidated if any acquisitions are made in the period between the posting of the circular to the shareholders and the meeting.

The Council Executive may dispense with the requirement of a mandatory offer where the approval of independent votes to the transfer of existing shares from one holder to another is obtained.

## 9. WHEN A CASH OFFER IS REQUIRED

### 9.1 WHEN A CASH OFFER IS REQUIRED

- (a) where except with the consent of the Council Executive, the shares of any class under offer in the offeree company acquired for cash by an offeror or any person acting in concert with it during the offer period, or within three months prior to its commencement, carry 10% or more of the voting rights currently exercisable at a class meeting of that class; or
- (b) in the view of the Council Executive there are circumstances which render such a course necessary in order to give effect to General Principle 1,

the offer for that class shall be in cash or accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for shares of that class during the offer period or within three months prior to its commencement.

### 9.2 DISPENSATION FROM HIGHEST PRICE

If the offeror considers that the highest price (for the purpose of Rule 9.1) ought not to apply in a particular case, it shall consult the Council Executive, which in its discretion may agree to an adjusted price.

## 10. SUBJECTIVE CONDITIONS

Save with the consent of the Council Executive, an offer shall not be subject to conditions which depend solely on subjective judgements by the directors of the offeror or the fulfilment of which is in their hands.

## 11. WHERE THERE IS MORE THAN ONE CLASS OF SHARES

### 11.1 COMPARABLE OFFERS

Where a company has more than one class of shares as its capital, a fair and appropriate offer, having regard to current circumstances, must be made for each class whether such capital carries voting rights or not. The Council Executive shall be consulted in advance of such an offer being made. An offer for non-voting shares shall not be made conditional on any particular level of acceptances in respect of that class unless the offer for the voting shares is also conditional on the success of the offer for the non-voting shares. Classes of non-equity capital need not be the subject of an offer, except in the circumstances referred to in Rule 8.1.

### 11.2 SEPARATE OFFERS FOR EACH CLASS

Where an offer is made for more than one class of shares, separate offers shall be made for each class.

## 12. AN APPROPRIATE OFFER FOR CONVERTIBLE OR OTHER RELEVANT SECURITIES

- 12.1 When an offer is made for shares and the offeree company has convertible securities, the offeror shall make an appropriate offer to the holders of convertible securities to ensure that their interests are safeguarded. Equality of treatment is required.
- 12.2 If an offeree company has options or subscription rights outstanding, the provisions of this Rule apply mutatis mutandis.

## 13. SPECIAL DEALS WITH FAVOURABLE CONDITIONS

Except with the consent of the Council Executive, an offeror or persons acting in concert with it shall not make any arrangements with holders of the relevant shares and shall not deal or enter into arrangements to deal in shares of the offeree company, or enter into arrangements which involve acceptance of an offer, either during an offer or when one is reasonably in contemplation, if there are favourable conditions attached which are not being extended to all holders of the relevant shares.

## 14. ANNOUNCEMENT OF ACCEPTANCE LEVELS

By 09:00 at the latest on the business day following the day on which an offer is due to expire, or becomes or is declared unconditional as to acceptances, or is extended, the offeror shall make an appropriate announcement and simultaneously inform the Council Executive for dissemination by the CSX. The announcement shall also state the total numbers of shares and rights over shares (as nearly as practicable);

- (a) for which acceptances of the offer have been received;
- (b) held before the offer period; and
- (c) acquired or agreed to be acquired during the offer period;

and shall specify the percentages of the relevant classes of shares represented by these numbers (see also Rule 28.2).

## 15. THE USE OF PROXIES AND OTHER AUTHORITIES IN RELATION TO ACCEPTANCES

An offeror shall not require the holder of relevant shares of the offeree company, as a term of his acceptance of an offer, to appoint a particular person as his proxy to vote in respect of those shares or to appoint a particular person to exercise any other rights or take any other action in relation to those shares unless the appointment is on the following terms, which shall be set out in the offer document:

- (a) the proxy may not vote, the rights may not be exercised and no other action may be taken unless the offer is wholly unconditional or, in the case of voting by the proxy, it will become wholly unconditional or lapse immediately upon the outcome of the resolution in question;
- (b) where relevant, the votes are to be cast as far as possible to satisfy any outstanding condition of the offer;
- (c) the appointment ceases to be valid if the acceptance is withdrawn; and
- (d) the appointment applies only to shares in respect of which there is an acceptance of the offer.

## 16. CONDUCT DURING THE OFFER

### 16.1 EQUALITY OF INFORMATION TO SHAREHOLDERS

Information about companies involved in an offer shall be made equally available to all shareholders as nearly as possible at the same time and in the same manner; but this Rule shall not apply to the furnishing, with the prior approval of the Council Executive, of information in confidence by an offeree company to a bona fide potential offeror or vice versa, or the issue of circulars to their own investment clients by brokers or advisers to any party to the transaction, provided that such issue has previously been approved by the Council Executive.

### 16.2 ADVERTISEMENTS

The publication of advertisements connected with an affected transaction or potential affected transaction shall be subject to the prior approval of the Council Executive.

### 16.3 DISTRIBUTION OF DOCUMENTS AND ANNOUNCEMENTS

Copies of all relevant documents and announcements bearing on an affected transaction, and of advertisements and any material to be released to the media, must at the time of release be lodged with the Council Executive.

Copies of all relevant documents and public announcements when issued or made shall also be made available at the same time to the advisers to all other parties to the offer.

### 16.4 EQUALITY OF INFORMATION TO COMPETING OFFERORS

Any information, including particulars of holders of relevant shares, given to a preferred offeror or potential offeror (but usually only when there has been a public announcement of the existence of the preferred potential offeror), shall on request be furnished equally and as promptly to a less welcome but bona fide offeror or potential offeror.

### 16.5 TELEPHONE CAMPAIGNS

Except with the prior approval of the Council Executive, campaigns in which holders of relevant shares are contacted by telephone shall be conducted only by staff of the financial advisers who are fully conversant with the requirements of and their responsibilities under the Code. Only previously published information which remains accurate, and is not misleading at the time it is quoted, shall be

used in telephone campaigns. Holders of relevant shares shall not be put under pressure and shall be encouraged to consult their professional advisers.

## 17. MANAGEMENT BUY-OUTS

If the offer or potential offer is for a management buy-out or similar transaction, the offeror or potential offeror shall, on request, forthwith furnish the independent directors of the offeree company and its advisers with all information which has been furnished by the offeror or potential offeror to external providers or potential providers of finance (whether equity or debt) for the buy-out.

## 18. STATEMENTS BY PARTIES DURING THE COURSE OF AN OFFER

Parties to an offer shall take care not to issue statements which, while not factually inaccurate, may mislead holders of relevant shares and the market or may create uncertainty. In particular, an offeror shall not make a statement to the effect that it may improve its offer without committing itself to doing so and specifying the improvement.

## 19. RESTRICTIONS ON FRUSTRATING ACTION

During the course of an offer, or even before the date of the offer if the board of the offeree company has reason to believe that a bona fide offer might be imminent, the board shall not, except in pursuance of a contract entered into earlier, without the approval of the holders of relevant shares in general meeting:

- (a) issue any authorised but unissued shares;
- (b) issue or grant options in respect of any unissued shares;
- (c) create or issue, or permit the creation or issue of, any shares carrying rights of conversion into or subscription for other shares;
- (d) sell, dispose of or acquire, or agree to sell, dispose of or acquire, assets of a material amount;
- (e) enter into contracts otherwise than in the ordinary course of business; or
- (f) pay any dividend which is abnormal as to timing and amount.

The notice convening the general meeting of holders of relevant shares shall include information about the offer or anticipated offer.

Where it is believed that an obligation or other special circumstance already exists, although a formal contract has not been entered into, the Council Executive shall be consulted and its consent obtained to proceed without a meeting of the holders of the relevant shares.

## 20. DOCUMENTS FROM THE OFFEROR AND THE OFFEREE BOARD

### 20.1 STANDARDS OF CARE

Each document issued to holders of relevant shares or advertisement in connection with an offer shall, as in the case of listing particulars, satisfy the highest standards of accuracy and the information contained therein shall be adequately and fairly presented. This applies whether it is issued directly by the company or by an adviser on its behalf.

### 20.2 THE GENERAL OBLIGATION AS TO INFORMATION

Holders of relevant shares shall be given sufficient information and advice to enable them to reach a properly informed decision as to the merits or demerits of an offer. Such information shall be made available to holders of relevant shares early enough to enable them to make a decision in good time.

### 20.3 RESPONSIBILITY FOR DOCUMENTS

- (a) Each document issued to holders of relevant shares in connection with an offer, and all advertisements published in respect thereof, in which there is a material expression of opinion shall state that the offeror and/or, where appropriate, the directors of the offeree company, accept responsibility for the information contained in the document or advertisement and that to the best of their knowledge and belief (having taken all reasonable care to ensure that such is the case) the information contained in the document or advertisement is in accordance with the facts and, where appropriate, that it does not omit anything likely to affect the import of such information.
- (b) If it is proposed that any director shall be excluded from such a statement, the omission and the reasons for it shall be stated in the document or advertisement.

## 21. OFFEROR DOCUMENTS

### **21.1 REASONS FOR OFFER AND INTENTIONS REGARDING THE DIRECTORS OF THE OFFEREE COMPANY**

An offeror shall furnish in the offer document its reasons for the offer and its intentions regarding the continuation of the business of the offeree company and the continuation in office of the directors of the offeree company.

### **21.2 FINANCIAL AND OTHER INFORMATION ON THE OFFEROR AND ON THE OFFEREE COMPANY**

- (a) The offer document shall contain the following information wherever it is reasonably available, about the offeree company and where the Council Executive so determines, about the offeror:
  - (i) for the past 3 financial years for which the information has been published, turnover, net profit or loss before and after taxation, the amount of tax, extraordinary items, outside shareholders' interests, the amount absorbed by dividends and earnings and dividends per share;
  - (ii) a statement of the assets and liabilities shown in the latest published audited accounts;
  - (iii) a cash flow statement if provided in the latest published audited accounts;
  - (iv) all known material changes in the financial or trading position of the company subsequent to the latest published audited accounts or a statement that there are no known material changes;
  - (v) details relating to items referred to in paragraph (a)(i) above in respect of any interim statement or preliminary announcement made since the latest published audited accounts;
  - (vi) inflation-adjusted information relating to paragraphs (a)(i) and (a)(ii) if any has been published;
  - (vii) significant accounting policies together with any points from the notes to the accounts which are of major relevance to an appreciation of the figures, including those relating to inflation-adjusted information;
  - (viii) where the offeror is a company, the names of its directors and their direct and indirect interests, if any, in the offeror and offeree company;

- (ix) a summary of the principle contents of each material contract (not being a contract entered into in the ordinary course of business) entered into by the offeror or any of its subsidiaries during the period beginning two years before the commencement of the offer period, including particulars of dates, parties, terms and conditions and any consideration passing to or from the offeror or any of its subsidiaries; and
- (x) any other relevant information required by the Council Executive.
- (b) The figures to be disclosed under paragraphs (a)(i) and (ii) are to be adjusted to eliminate material unusual and non-recurring items and the nature of the adjustments made shall be disclosed.
- (c) Where, because of a change in accounting policy, figures are not comparable to a material extent, this shall be disclosed and where possible the approximate amount of the resultant variation shall be stated.
- (d) In a highly leveraged offer, the Council Executive will require that the offer document contains a description of the financing arrangements. An offer shall be considered to be highly leveraged if, as a result of the offer, the offeror will incur a high level of debt and the payment of interest, repayments or security for the debt will substantially depend on the business of the offeree company. In cases of doubt, the Council Executive shall be consulted.

### **21.3 HOLDINGS OF SHARES AND SECURITIES AND DEALINGS**

- (a) The offer document shall state:
  - (i) the holdings of shares by the offeror in the offeree company;
  - (ii) the holdings of securities in the offeror (in the case of a securities exchange offer only) and in the offeree company in which each director of the offeror is directly or indirectly interested;
  - (iii) the holdings of securities by the offeror (in the case of a securities exchange offer only) and in the offeree company which any person acting in concert with the offeror owns or controls, together with the name of such person acting in concert;
  - (iv) the holdings of securities in the offeror (in the case of a securities exchange offer only) and in the offeree company owned or controlled by any person who, prior to the posting of the offer document, has irrevocably committed himself to accept the offer, together with the name of such person.
- (b) If in any of the above categories there are no holdings of shares or securities, this fact shall be stated. This will not apply to category (a)(iv) if there are no such irrevocable commitments.
- (c) If any party whose holdings of shares or securities are required by this Rule to be disclosed has dealt for value in the securities in question during

the period beginning six months prior to the offer period and ending with the latest practicable date prior to the posting of the offer document, the details, including dates and prices, shall be stated. If no such dealings have taken place, this fact shall be stated.

#### **21.4 DIRECTORS' EMOLUMENTS**

Unless an exemption is obtained from the Council Executive, the offer document shall state whether and in what manner the emoluments of the offeree company's directors will be affected by the acquisition of the offeree company or by any other associated transaction. If there will be no effect, this shall be stated.

#### **21.5 SPECIAL ARRANGEMENTS**

Unless otherwise agreed by the Council Executive, the offer document shall contain a statement on whether or not any agreement, arrangement or understanding (including any compensation arrangement) exists between the offeror or any person acting in concert with it and any of the directors of the offeree company or persons who were directors within the preceding 12 months, or holders of relevant shares or persons who were holders thereof within the preceding 12 months, having any connection with or dependence upon the offer. The offer document shall also contain full particulars of any such agreement, arrangement or understanding.

#### **21.6 TERMS AND MECHANICS OF THE OFFER**

The offer document shall incorporate the terms of the offer and its proposed implementation and the mechanics thereof.

#### **21.7 CASH CONFIRMATION**

Unless otherwise permitted by the Council Executive when the offer is for cash or includes an element of cash, the offer document shall include a statement that an irrevocable guarantee or other proof by an appropriate third party (e.g. the offeror's bank or financial adviser) has been furnished in favour of the holders of the relevant shares that resources will be available to the offeror sufficient to satisfy full acceptance of the offer. The party confirming that resources will be available will not be expected to produce the cash itself if, in giving the confirmation, it acts responsibly and has taken all reasonable steps to assure itself that the cash will be available.

## **21.8 ULTIMATE OWNER OF SHARES ACQUIRED**

Unless otherwise agreed by the Council Executive, the offer document shall contain a statement on the number of any shares acquired in pursuance of the offer which will be transferred to any other person, together with the names of the parties to any such agreement, arrangement or understanding and particulars of all shares in the offeree company held by such persons, or a statement that no such shares are held.

## **21.9 VALUATION OF UNLISTED SECURITIES CONSIDERATION**

When the offer involves the issue of unlisted securities, the offer document and any subsequent circular from the offeror shall contain an appropriate independent valuation thereof and the information required by Rule 21.2.

## **21.10 NO SET-OFF OF CONSIDERATION**

Except with the consent of the Council Executive, the offer document shall contain a statement to the effect that settlement of the consideration to which any holder of relevant shares is entitled under the offer will be implemented in full in accordance with the terms of the offer without regard to any lien, right of set-off, counterclaim or other analogous right to which the offeror may otherwise be, or claim to be, entitled against such holder of relevant shares.

The Council Executive will only grant consent in exceptional circumstances and where all holders of relevant shares are to be treated similarly.

## **21.11 ARRANGEMENTS, UNDERTAKINGS OR AGREEMENTS IN RELATION TO OFFERS**

Any arrangements with, undertakings by, or agreements between an offeror and the offeree company and persons acting in concert with either of them in relation to relevant shares, to the extent that such are reasonably ascertainable, shall be disclosed in the offer document. If there are none, this shall be stated.

## 22. OFFEREE BOARD CIRCULARS

### 22.1 VIEWS OF THE BOARD

The board of the offeree company shall circulate its views on the offer, including any alternative offers, and shall, at the same time, make known to the holders of relevant shares in the offeree company the substance of the advice given to it by its external advisers.

### 22.2 VIEWS OF THE BOARD ON THE OFFEROR'S PLANS FOR THE COMPANY AND ITS DIRECTORS

The board of the offeree company should, insofar as relevant, comment upon the statements in the offer document regarding the offeror's intentions in respect of the offeree company and its directors made pursuant to Rule 21.1.

### 22.3 HOLDINGS OF SHARES AND SECURITIES AND DEALINGS

- (a) The first major circular from the offeree board advising holders of relevant shares on an offer (whether recommending acceptance or rejection of the offer) shall state:
- (i) the holdings of relevant securities of the offeree company in the offeror;
  - (ii) the holdings of relevant shares in the offeree company and securities in the offeror in which directors of the offeree company are directly or indirectly interested;
  - (iii) the holdings of relevant shares in the offeree company and (in the case of a securities exchange offer only) of relevant securities in the offeror which any person acting in concert with the offeree company owns or controls and the holdings of relevant shares in the offeree company and, (in the case of a securities exchange offer only) of relevant securities in the offeror, owned or controlled by a subsidiary of the offeree company, or by any person acting in concert with it;
  - (iv) the holdings of relevant shares in the offeree company and (in the case of a securities exchange offer only) of relevant securities in the offeror owned or controlled by a person who has any arrangement, undertaking or agreement of the kind referred to in Rule 21.11 with the offeree company or with any person acting in concert with the offeree company; and

- (v) whether the directors of the offeree company intend, in respect of their own beneficial holdings of relevant shares, to accept or reject the offer.
- (b) If in any of the above categories, there are no holdings of relevant shares or securities, that fact shall be stated.
- (c) If any party whose holdings of relevant shares or securities are required by paragraph (a) of this Rule to be disclosed has dealt for value in the shares or securities in question during the period beginning six months prior to the offer period and ending with the latest practicable date prior to the posting of the circular, the details, including dates and prices, shall be stated. If no such dealings have taken place, that fact shall be stated.

#### **22.4 DIRECTORS' SERVICE CONTRACTS**

- (a) The first major circular from the offeree board advising holders of relevant shares on an offer (whether recommending acceptance or rejection of the offer) shall disclose material particulars of all service contracts of any director or proposed director of the offeree company with the company or any of its subsidiaries. If there are none, this should be stated.
- (b) If any such contracts have been entered into or amended within six months of the date of the document, particulars shall be given in respect of the earlier contracts (if any) which have been replaced or amended as well as in respect of the current contracts. If there have been none, this should be stated.

#### **22.5 ARRANGEMENTS IN RELATION TO DEALINGS**

The first major circular from the offeree board advising holders of the relevant shares on an offer, whether recommending acceptance or rejection of the offer, shall disclose any arrangements, undertakings or agreements of the kind referred to in Rule 21.11. If there are none, this shall be stated.

## 23. DOCUMENTS TO BE AVAILABLE FOR INSPECTION

Except with the consent of the Council Executive, copies of the documents contemplated in paragraphs (a) to (e) below shall be made available for inspection from the time the offer document or offeree board circular, as appropriate, is published until the end of the offer period. The offer document or offeree board circular shall state which documents are so available and the place in the Cayman Islands or such other place, as the Council Executive may agree, where inspection can be made.

- (a) Where a profit forecast has been made:
  - (i) the reports of the auditors or reporting accountants (Rule 25.3); and
  - (ii) the letters giving the consents of the auditors or reporting accountants and appropriate external valuers to the issue of the relevant document, with the report in the form and context in which it is included or, if appropriate, to the continued use of the report in a subsequent document (Rules 25.4 and 25.5).
- (b) Where an asset valuation has been made:
  - (i) the valuation certificate and associated report or a schedule containing details of the aggregate valuation (Rule 26.3); and
  - (ii) a letter stating that the valuer has given and not withdrawn his consent to the publication of his valuation certificate in the form and context in which it is included in the relevant document.
- (c) Any document evidencing an irrevocable commitment to accept an offer or any arrangement, undertaking or agreement of the kind referred to in Rule 21.1.
- (d) The memorandum and articles of association of the offeree company, and where there is a securities exchange offer, also of the offeror company.
- (e) The annual financial statements of the offeree company, and, where there is a securities exchange offer, also the offeror company for the last three completed financial years in respect of which audited annual financial statements have been issued.

## 24. DOCUMENTS SUBSEQUENTLY SENT TO HOLDERS OF RELEVANT SHARES

### 24.1 MATERIAL CHANGES

Documents subsequently sent to holders of relevant shares of the offeree company by either party shall contain details of any material changes in information previously published by or on behalf of the relevant party during the offer period. If there have been no such changes, this shall be stated. In particular, the following matters shall be updated:

- (a) holdings of relevant shares and securities and dealings (Rules 21.3 and 22.3);
- (b) directors' emoluments (Rule 21.4);
- (c) special arrangements (Rule 21.5);
- (d) ultimate owner of shares acquired under the offer (Rule 21.8);
- (e) changes to directors' service contracts (Rule 22.4); and
- (f) arrangements, undertakings and agreements in relation to offers (Rules 21.11 and 22.5).

## 25. PROFIT FORECASTS

### 25.1 STANDARDS OF CARE

The hazards attached to the forecasting of profits shall in no way detract from the necessity of maintaining the highest standards of accuracy and fair presentation in all communications to holders of relevant shares in an offer. A profit forecast shall be compiled with great care and objectivity by the directors, whose sole responsibility it is.

### 25.2 ASSUMPTIONS

- (a) When a profit forecast appears in any document addressed to holders of relevant shares in connection with an offer, the material assumptions, including the commercial assumptions, upon which the directors have based their profit forecast, shall be stated in the document.
- (b) When, after an offer document has been posted, a profit forecast is given in a press announcement, any assumptions on which the forecast is based shall be included in the announcement.

### 25.3 REPORTS REQUIRED IN CONNECTION WITH PROFIT FORECASTS

- (a) In all cases, the assumptions, accounting policies and calculations for the forecasts shall be examined and reported on by the auditors or reporting accountants.
- (b) When income from land and buildings is a material element in a forecast, that part of the forecast shall be examined and reported on by an appropriate external valuer: this requirement does not apply where the income is virtually certain, e.g. known rents receivable under existing leases.
- (c) Exceptionally, the Council Executive may accept that, because of the uncertainties involved, it is not possible for a forecast previously made to be reported on in accordance with the Code nor for a revised forecast to be made. In these circumstances, the Council Executive requires that holders of relevant shares be given a full explanation of why the requirements of the Code are not capable of being met.

### 25.4 PUBLICATION OF REPORTS AND CONSENT LETTERS

When an offer document has been posted, the reports shall be included in the document containing the forecast or, when the forecast has been made in a press

announcement, in a document which shall be sent to holders of relevant shares with a minimum of delay after the announcement is published. The reports shall be accompanied by a statement that those making them have given and not withdrawn their consent to publication.

## **25.5 SUBSEQUENT DOCUMENTS - CONTINUING VALIDITY OF FORECAST**

When a company includes a forecast in a document, any document subsequently sent out by that company in connection with that offer shall, except with the consent of the Council Executive, contain a statement by the directors that the forecast remains valid for the purpose of the offer and that the accountants and others who reported on the forecast have indicated that they have no objection to their reports continuing to apply.

## **25.6 STATEMENTS WHICH WILL BE TREATED AS PROFIT FORECASTS**

### **(a) When no figure is mentioned**

Even when no particular figure is mentioned or even if the word "profit" is not used, certain forms of words may constitute a profit forecast, particularly when considered in context. Examples are "profits will be somewhat higher than last year" and "performance in the second half year is expected to be similar to our performance and results in the first half-year" (when interim figures have already been published)". Whenever a form of words puts a floor under, or a ceiling on, the likely profits of a particular period or contains the data necessary to calculate an approximate figure for future profits, it will be treated by the Council Executive as a profit forecast which shall be reported on in accordance with this Rule. In cases of doubt the Council Executive shall be consulted.

### **(b) Forecasts before the offer period**

Except with the consent of the Council Executive, any relevant profit forecast which has been made before the commencement of the offer period shall be examined, repeated and reported on in the document sent to holders of relevant shares.

### **(c) Estimates of profit for a completed period**

An estimate of profit for a period which has already expired shall be treated as a profit forecast.

### **(d) Interim and preliminary figures**

Except with the consent of the Council Executive, any profit figures published during an offer period shall be audited, or, if unaudited, shall be reported on by the auditors on a basis consistent with previous years.

**(e) Forecasts for a limited period**

A profit forecast for a limited period (e.g. the following quarter) is subject to this Rule.

**(f) Dividend forecasts**

Except with the consent of the Council Executive, a dividend forecast will be considered to be a profit forecast.

**25.7 PRE-TAX PROFIT FORECASTS**

When a forecast of profit before taxation appears in a document addressed to holders of relevant shares, it shall be accompanied by a forecast of earnings per share arising from the said profit.

**25.8 WHEN A FORECAST RELATES TO A PERIOD WHICH HAS COMMENCED**

Whenever a profit forecast is made in relation to a period in which trading has already commenced, any previously published profit figures in respect of any expired part of that trading period, together with comparable figures for the same part of the preceding year, shall be stated.

**25.9 INFLATION-ADJUSTED FORECASTS**

In general, all the relevant provisions of this Rule apply also to a profit forecast prepared on an inflation-adjusted basis. The basis of computation underlying such a forecast shall be stated. Any such forecast shall also be accompanied by a corresponding forecast prepared on a historical cost basis.

## 26. ASSET VALUATIONS

### **26.1 VALUATIONS TO BE REPORTED ON IF GIVEN IN CONNECTION WITH AN OFFER**

When a valuation of assets is given in connection with an offer, it shall be supported by the opinion of an appropriate external valuer.

**(a) Type of asset**

This Rule applies not only to land, buildings and process plant and machinery but also to other assets, e.g. stocks, ships, aircraft, television rental contracts and individual parts of a business. Where such assets are involved, the Council Executive shall be consulted in advance.

**(b) In connection with an offer**

in certain cases documents issued by the offeror or the offeree company will include statements of assets reproducing directors' estimates of asset values published with the company's accounts. The Council Executive will not regard such estimates as "given in connection with an offer" except where asset values are a particularly significant factor in assessing the offer and the estimates are, accordingly, given considerably more prominence in the relevant documents than merely being referred to in a note or appendix to a statement of assets.

### **26.2 CURRENT VALUATION**

A valuation shall state the effective date as at which the assets were valued and the professional qualifications and address of the valuer. If a valuation is not current, the valuer shall state that a current valuation would not be materially different. If this statement cannot be made, the valuation shall be updated.

### **26.3 OPINION AND CONSENT LETTERS**

**(a) Publication of opinion**

The opinion of value shall be contained in the document containing the asset valuation.

**(b) Consent**

The document shall also state that the valuer has given and not withdrawn his consent to the publication of his valuation certificate.

**(c) Valuation certificate to be available for inspection**

Where a valuation of assets is given in any document addressed to holders of relevant shares, the valuation certificate shall be made available for inspection in the manner described in Rule 23, together with an associated report or schedule containing details of the aggregate valuation. Where the Council Executive is satisfied that such disclosure may be commercially disadvantageous to the company concerned, it may allow the report or schedule to appear in a summarised form. In certain cases, the Council Executive may require any of these documents to be reproduced in full in a document sent to holders of relevant shares.

**26.4 WAIVER IN CERTAIN CIRCUMSTANCES**

In exceptional cases, certain companies, in particular mining and property companies, which are the subject of an unexpected offer may find difficulty in obtaining, within the time available, the opinion of an appropriate external valuer to support an asset valuation, as required by this Rule, before the board's circular has to be sent out. In such cases, the Council Executive may waive strict compliance with this requirement. The Council Executive will only do this where the interests of holders of relevant shares appear on balance to be best served by permitting informal valuations to appear coupled with such substantiation as is available. Offeree companies or their advisers who wish to make use of this procedure shall consult the Council Executive at the earliest opportunity.

## 27. TIMING AND REVISION

### **27.1 POSTING THE OFFER DOCUMENT**

The offer document shall be posted within 30 days of the announcement of a firm intention to make an offer. The Council Executive is to be consulted if the offer document is not to be posted within this period and may, in its discretion, require that interest for the period of delay be included in the offer.

### **27.2 POSTING THE OFFEREE BOARD CIRCULAR**

The board of the offeree company shall advise its holders of relevant shares of its views on the offer within 21 days of publication of the offer document.

## 28. TIMING OF THE OFFER

### **28.1 FIRST CLOSING DATE**

An offer shall initially be open for at least 28 days following the date on which the offer document is posted.

### **28.2 FURTHER CLOSING DATES TO BE STATED**

In any announcement of an extension of an offer, either the next closing date shall be stated or, if the offer is unconditional as to acceptances, a statement may be made that the offer will remain open until further notice. In the later case, at least 21 days' notice in writing shall be given, before the offer is closed, to those holders of relevant shares who have not accepted.

### **28.3 NO OBLIGATION TO EXTEND**

There is no obligation to extend an offer, the conditions of which are not met by the first or any subsequent closing date.

### **28.4 OFFER TO REMAIN OPEN FOR AT LEAST 21 DAYS AFTER UNCONDITIONAL AS TO ACCEPTANCES**

After an offer has become or is declared unconditional as to acceptances, the offer shall remain open for not less than 21 days after the date on which it would otherwise have expired. When, however, an offer is unconditional as to acceptances from the outset, a 21 day extension is not required but the position shall be set out clearly and prominently in the offer document.

### **28.5 NO EXTENSION STATEMENTS**

If statements in relation to the duration of an offer such as "The offer will not be extended beyond a specified date unless it is unconditional as to acceptances" ("no extension statements") are included in documents sent to holders of relevant shares in the offeree company, or are made by or on behalf of an offeror, its directors, officials or advisers, and not withdrawn immediately if incorrect, then only in exceptional circumstances will the offeror be allowed subsequently to extend its offer beyond the stated date except where the right to do so has been specifically reserved. The provisions of Rule 28.4 will apply *mutatis mutandis*.

## **28.6 FINAL DAY RULE (FULFILMENT OF ACCEPTANCE CONDITION, TIMING AND ANNOUNCEMENT)**

- (a) Except with the consent of the Council Executive, an offer (whether revised or not) may not become or be declared unconditional as to acceptances after midnight on the 60th day after the day the initial offer document was posted. The Council Executive's consent will normally only be granted:
  - (i) if a competing offer has been announced (in which case both offerors will normally be bound by the time-table established by the posting of the competing offer document); or
  - (ii) if the board of the offeree company consents to an extension.
- (b) Except with the consent of the Council Executive, on the 60th day after the day upon which the initial offer document was posted (or any other date beyond which the offeror has stated that its offer will not be extended) a press release shall be made by 17:00 as to whether the offer is unconditional as to acceptances or has lapsed.

## **28.7 TIME FOR FULFILMENT OF ALL OTHER CONDITIONS**

Except with the consent of the Council Executive, all other conditions shall be fulfilled or the offer shall lapse within 28 days of the first closing date, or the date on which the offer becomes unconditional as to acceptances whichever is the later.

## **28.8 SETTLEMENT OF CONSIDERATION**

Except with the consent of the Council Executive, the consideration shall be posted within 7 days of the date of the offer becoming or being declared unconditional and acceptance thereof, whichever is the later.

## 29. SCHEMES OF ARRANGEMENT OR OTHER METHODS

### 29.1 OFFERS IMPLEMENTED BY SCHEMES OF ARRANGEMENT OR OTHER METHODS

- (a) Where an offer is implemented by a scheme of arrangement or by a reduction of capital or conversion of securities or any other method, then, for the purposes of these Rules:
- (i) in the case of a scheme of arrangement, the company in respect of which the scheme is proposed shall be deemed to be the offeree company, and the persons who will be the holders of relevant shares of the company after the scheme of arrangement has been sanctioned shall be deemed to be the offeror;
  - (ii) in the case of a reduction of capital or conversion of securities, the company undertaking the reduction or conversion shall be deemed to be the offeree company and the persons who will be the holders of the relevant shares of the company after the reduction or conversion shall be deemed to be the offerors;
  - (iii) in the case of any other method being utilised to implement an offer, the Council Executive shall be consulted in advance;
  - (iv) save insofar as the Council Executive may otherwise permit, the provisions of these Rules relating to disclosure and, where possible, timing and periods of notice shall apply *mutatis mutandis*.
- (b) In the case of a reduction of capital or a conversion of securities which has as its purpose the elimination of a minority shareholding, the Council Executive may in appropriate circumstances require that at the relevant meetings the majority votes shall be excluded.
- (c) **Standby offers**

Where subsequent to the announcement of a firm intention to make an offer, but prior to the opening date of the offer, the market price of the relevant shares exceeds that which it is intended to offer, the offeror may, with the permission of the Council Executive, make a standby offer on such terms and conditions as the Council Executive may determine.

## 30. REVISION

### **30.1 OFFER OPEN FOR 28 DAYS AFTER REVISION**

Save with the consent of the Council Executive, an offer, if revised, shall be kept open for at least 28 days following the date on which the revised offer document is posted. Subject to such consent, no document revising the offer may therefore be posted within the 28 days ending on the last day the offer may become unconditional as to acceptances.

### **30.2 NO INCREASE STATEMENTS**

If statements in relation to the value or type of consideration such as "The offer will not be further increased" or "our offer remains at x cents per share and it will not be raised" ("no increase statements") are included in documents sent to holders of relevant shares of the offeree company, or are made by or on behalf of an offeror, its directors, officials or advisers, and not withdrawn immediately if incorrect, then only in exceptional circumstances will the offeror be allowed subsequently to amend the terms of its offer in any way, even if the amendment would not result in an increase of the value of the offer, except where the right to do so has been specifically reserved.

### **30.3 ENTITLEMENT TO REVISED CONSIDERATION**

If an offer is revised, all holders of relevant shares who accepted the original offer shall be entitled to the revised consideration.

### **30.4 NEW CONDITIONS FOR INCREASED OR IMPROVED OFFERS**

Subject to the prior consent of the Council Executive, and only to the extent necessary to implement an increased or improved offer, the offeror may introduce new conditions.

## 31. ALTERNATIVE OFFERS

### 31.1 TIMING AND REVISION

Save with the prior consent of the Council Executive, the provisions of Rules 28 and 30 apply equally to alternative offers, including cash alternatives.

### 31.2 REINTRODUCTION OF ALTERNATIVE OFFERS

Where a firm statement has been made that an alternative offer will not be extended or reintroduced and that that alternative offer has ceased to be open for acceptance, neither that alternative, nor any substantially similar alternative, may be reintroduced. Where, however, such a statement has not been made and an alternative offer has closed for acceptance, an offeror will not be precluded from reintroducing that alternative at a later date. Reintroduction would constitute a revision of the offer and would, therefore, be subject to the requirements of, and only be permitted as provided in, Rule 30.

## 32. RESTRICTIONS FOLLOWING OFFERS

### **32.1 DELAY OF 12 MONTHS BEFORE SUBSEQUENT OFFER**

Except with the consent of the Council Executive, where an offer has been announced or posted but has not become or been declared unconditional and has been withdrawn or has lapsed, neither the offeror, nor any person who acted in concert with the offeror in the course of the original offer, nor any person who is subsequently acting in concert with any of them, may within 12 months from the date on which such offer is withdrawn or lapses either:

- (a) make an offer for the relevant shares of the offeree company; or
- (b) acquire any shares of the offeree company if the offeror or any such person would thereby become obliged under Rule 8 to make an offer.

### **32.2 PARTIAL OFFERS**

The restrictions in Rule 32.1 also apply following a partial offer which could result in a holding of not less than the 30% and not more than 50% of the voting rights of the offeree company whether or not the offer has become or been declared unconditional. When such an offer has become or been declared unconditional, the period of 12 months runs from that date.

### 33. REDEMPTION OR REDUCTION BY A COMPANY OF ITS OWN SHARES OR SECURITIES

Any redemption or reduction of securities of the offeror company or shares of the offeree company made or to be made in terms of an offer or any such redemption or reduction effected within 12 months prior to the commencement of the offer period shall be disclosed in accordance with Rule 7 and in all relevant offer documents.

## 34. POWER OF COUNCIL EXECUTIVE TO GRANT EXEMPTION FROM ANY REQUIREMENT

Without derogation from any specific provision of the Rules whereby the Council Executive may grant exemption or dispensation from any requirement or permission or consent to depart from any requirement, the Council Executive shall enjoy a general discretion to authorise, subject to such terms and conditions as it may prescribe, non-compliance with or departure from any requirement of the Code and to excuse or exonerate any party from failure to comply with any such requirement.



# THE RULES GOVERNING SUBSTANTIAL ACQUISITIONS OF SHARES

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## 1. INTRODUCTION

### 1.1 CONSTITUTION

The Rules Governing Substantial Acquisitions of Shares (the "SARs") are issued by the CSX.

The SARs are administered on a day-to-day basis by the Council through its executive, headed by the Chief Executive Officer. The Council Executive is available both for consultation and to give rulings on points of interpretation.

These Rules are not framed in technical language. Therefore the Council of the CSX may modify or relax the application of a Rule if it considers that, in the particular circumstances of the case, it would operate unduly harshly or in an unnecessarily restrictive or burdensome, or otherwise inappropriate, manner.

### 1.2 SCOPE

Subject to certain exceptions, the SARs restrict the speed with which a person may increase his holding of shares and rights over shares to an aggregate of between 15% and 30% of the voting rights of a company. The SARs also require accelerated disclosure of acquisitions of shares or rights over shares relating to such holdings.

Subject to the provisions of this Rule and Rule 1.3 below, The SARs apply to transactions in the shares of all companies listed on the CSX other than open-ended mutual funds.

The SARs do not apply to an acquisition by a person:

- (a) who has announced a firm intention to make an offer for the company, to which the CSX Code on Takeovers and Mergers ("the Code") applies, the posting of which is not, or has ceased to be, subject to a pre-condition. A person who makes such an announcement is subject to the Code, and not to the SARs, in respect of acquisitions during the course of the offer; or
- (b) which results in his holding shares or rights over shares carrying in the aggregate 30% or more of the voting rights of the company. Such a person

will be subject to the provisions of Rule 8 of the Code and will, if appropriate, be obliged to make a mandatory offer under that Rule.

### **1.3 DUAL JURISDICTION**

Where a listed company is subject to primary regulation by a recognised stock exchange (as defined in the CSX listing rules) and where such primary regulatory exchange ("PRE") has provisions which govern the substantial acquisition of shares and such provisions apply to the listed company and/or the relevant transaction then, as a general rule, such provisions will be deemed to govern the conduct of any such transaction and the provisions of these SARs shall not apply.

Further, if the jurisdiction within which the listed company is domiciled or in which the PRE is situated, has law or regulation governing the substantial acquisitions of shares, which apply to the listed company and/or the relevant transaction then, as a general rule, such law and regulation will be deemed to govern the substantial acquisition of shares then provisions of the SARs shall not apply.

#### **1.31.4 ENFORCEMENT, DISCIPLINARY PROCEEDINGS AND APPEALS**

The position on enforcement and disciplinary proceedings is the same as that under the Code. If a person wishes to contest a ruling of the Council Executive, he may ask for the matter to be reviewed by the Council. Detailed information on these matters and on the procedures of the Council is contained in the Introduction to the Code.

## 2. DEFINITIONS

### **2.1 Business day**

A business day is a day on which the CSX is open for the transaction of business.

### **2.2 Person**

A person (and, where appropriate, a buyer) includes two or more persons who act by agreement or understanding within the meaning of Rule 5 of the SARs.

### **2.3 Rights over shares**

Rights over shares include any rights acquired by a person by virtue of an agreement to purchase shares or an option to acquire shares or an irrevocable commitment to accept an offer to be made by him or an agreement to acquire voting rights or general control of them.

### **2.4 Single shareholder**

A number of shareholders wishing to dispose of their shares or rights over shares will be regarded as a single shareholder only if they are all members of the same family or of a group of companies.

### **2.5 Voting rights**

Voting rights means all the voting rights attributable to the share capital of a company which are currently exercisable at a general meeting.

## 1. RESTRICTIONS ON ACQUISITION

- 1.1 Except as permitted by Rule 2, a person may not, in any period of 14 days, acquire shares carrying voting rights in a company, or rights over such shares, representing 5% or more of the voting rights if such acquisition, when aggregated with any shares or rights over shares which he already holds, would carry 15% or more, but less than 30%, of the voting rights of that company.
- 1.2 It will be necessary before making an acquisition to identify and aggregate the acquisitions made in the preceding 13 days with the acquisition about to be made and any other already made on that day. If the total is less than 5%, the acquisition may be made; if the total is 5% or more (and would result in the total holding being 15% or more, but less than 30%) it may not be made unless it falls within one of the exceptions permitted by Rule 2.
- 1.3 Subject to Rule 1.6, calculations must be made by reference to the voting rights attributable to the issued share capital at the time of the acquisition, after taking account of the latest published information.
- 1.4 Following the closing of a tender offer, shares acquired under the tender offer must be treated as an acquisition made on the day on which the tender offer closes.
- 1.5 Subject to Rule 1.6, this Rule does not apply to:
  - (a) the acquisition of new shares, securities convertible into new shares or rights to subscribe for new shares (other than the purchase of rights arising pursuant to a rights issue) or the acquisition of new or existing shares, or rights in relation to such shares, under a share option scheme; or
  - (b) the exercise of options over existing shares.
- 1.6 In certain circumstances, such as when a rights issue is in progress, shares carrying voting rights may have been allotted (even if provisionally) by the company but the relevant voting rights may not yet be exercisable, because, for example, the shares have been allotted on renounceable letters of allotment and no person has yet been registered as the holder. In such circumstances, the Council Executive should be consulted. The Council Executive's approach would normally be that percentages for the purpose of this Rule should be calculated not only by reference to shares in respect of which voting rights are currently exercisable but also by reference to the aggregate of such shares and those shares to which voting rights would attach on registration.

## 2. EXCEPTIONS TO RESTRICTIONS

The restrictions in Rule 1 do not apply to an acquisition of shares carrying voting rights in a company, or rights over such shares, by a person:-

- (a) from a single shareholder if it is the only such acquisition within any period of 14 days; or
- (b) pursuant to a tender offer in accordance with Rule 4; or
- (c) immediately before the person announces a firm intention to make an offer (the posting of which will not be subject to a pre-condition) provided that the offer will be publicly recommended by, or the acquisition is made with the agreement of, the board of the offeree company, and the acquisition is conditional upon the announcement of the offer.

As set out in the Introduction to this section, the SARs are not relevant to a person who has announced a firm intention to make an offer to which the Code applies, the posting of which is not, or has ceased to be, subject to a pre-condition, or who acquires shares or rights over shares taking his holding in the aggregate to 30% or more of the voting rights of the company.

*Practical example of the application of Rules 1 & 2. All the purchases in each illustration below take place in the same fourteen day period.*

Existing shareholding	Details of purchases	Permitted under the SAR's?
8%	4% from two shareholders	Yes – purchases <5%
2%	12% from two shareholders	Yes – holding <15%
13%	3% from one shareholder	Yes – only one shareholder
6%	5% from two shareholders	No

Note that other circumstances when acquisitions will be permitted include:

- (d) shares acquired by way of a tender offer; and
- (e) shares acquired immediately before a recommended offer is announced.

### 3. DISCLOSURE

Following an acquisition of shares carrying voting rights in a company, or rights over such shares, a person must notify that acquisition and his total holding, specifying whether such interest is beneficial or non-beneficial to the company and to the Council Executive, not later than 12 noon on the business day following the date of the acquisition, for dissemination by the CSX, if:

- (a) as a result of the acquisition he comes to hold, with any shares or rights over shares already held by him, shares or rights over shares representing 15% or more of the voting rights in a company; or
- (b) his holding of shares or rights over shares already represents 15% or more of the voting rights and as a result of the acquisition is increased to or beyond any whole percentage figure.

The notification must distinguish between acquisitions and holdings of shares and rights over shares, specifying the nature of any rights concerned and giving the relevant number of shares in each case. This Rule does not apply to an acquisition covered by Rules 2(b) or (c).

A specimen disclosure form is contained in Appendix 1. Disclosures under this Rule should follow that format.

## 4. TENDER OFFERS

### 4.1 PROCEDURE AND CLEARANCE

- (a) A person publishing a tender offer (whether it is made on the CSX or elsewhere) must do so by announcement on the CSX News Service and by paid advertisement in the press and must notify the Council Executive and the company concerned of the information specified in Rule 4.2 on the day on which the tender offer is made.
- (b) Subject to paragraph (c) below, the buyer must treat all shareholders on equal terms.
- (c) A tender offer must be for cash only but may be at a fixed price or a maximum price; top-up arrangements are not permitted.
  - (i) Fixed price: if the tenders exceed the number of shares sought, they will be scaled down pro rata.
  - (ii) Maximum price: if the tender offer is over-subscribed, the striking price will be the lowest price at which the number of shares sought is met and all who tender at or below the striking price will receive that price. If necessary, tenders made at the striking price will be scaled down pro rata.

If the tender offer is under-subscribed, all who tender will receive the maximum or fixed price, except where fewer shares are tendered than the percentage below which the tender is void.

- (d) The text of the advertisement must be cleared beforehand by the Council Executive.
- (e) In every case the Council Executive must be supplied with copies of the final text of the advertisements at the same time as they are given to the press.
- (f) The Council Executive must be consulted if a tender offer is proposed for shares in a company subject to an offer under the Code.
- (g) The maximum number of shares offered for in the tender offer should not be such as would result in the buyer holding shares or rights over shares carrying in the aggregate 30% or more of the voting rights of the company on the closing date of the tender. Calculations should normally be made by reference to the issued share capital at the time of the announcement of the tender offer after taking into account the latest published information; if, however, it is known at the time of the announcement that by the closing date of the tender the issued share capital will have changed, this must also be taken into account (see also Rule 1.6).

## **4.2 DETAILS OF TENDER OFFER ANNOUNCEMENTS**

- (a) The advertisement of a tender offer, which must constitute a firm offer, must include the particulars set out below:
  - (i) the name of the buyer;
  - (ii) the name of the broker or other agent acting for the buyer;
  - (iii) the name of the company whose shares are sought;
  - (iv) the maximum number of shares or proportion of voting capital offered for;
  - (v) a statement that, if tenders totalling less than 1% but more than 5% of the voting rights of the company are received, the tender offer will be void;
  - (vi) a statement that, subject to paragraph (v), a shareholder's tender will be irrevocable;
  - (vii) the fixed or maximum price offered;
  - (viii) the present holding of the buyer, distinguishing between shares and rights over shares and specifying the nature of any rights concerned and giving the relevant number of shares in each case;
  - (ix) the closing day and time for the tender, which must be for a minimum of twenty eight days, inclusive of the day the advertisement appears and the day on which the tender closes; and
  - (x) the arrangements for delivery and settlement (on a basis approved in advance by the Council Executive).
- (b) A tender offer may not be subject to any condition other than paragraph (a)(v) above.
- (c) If a buyer wishes to make a statement about his future intentions, it must be contained in the advertisement of the tender offer and should be explicit and unambiguous. The Council Executive should be consulted in advance with regard to any such statement.
- (d) If a buyer wishes, a statement may be made comparing the value of the tender offer with the market value of the shares being offered for.
- (e) The advertisement must be restricted to the items above together with any information required by the Council Executive.
- (f) If a buyer makes a statement which implies that he does not intend to make an offer for the company, he will not normally be permitted to announce an offer or possible offer within six months of the date of such statement, unless an offer for that company is announced by a third party within that period.
- (g) The limit on the amount of information permissible in tender advertisements is strictly enforced; no form of argument or persuasion is allowed. Consequently the buyer (or his advisers) may not make any

statement or otherwise make public any information in connection with the tender offer which is not already contained in the tender offer advertisement itself.

#### **4.3 CIRCULATION OF TENDER OFFER AND OTHER DOCUMENTS**

- (a) A buyer, or any person acting for him, may circulate copies of the tender announcement to shareholders of the company whose shares are sought. A copy of any such circular must be lodged with the Council Executive at the same time as it is posted to shareholders.
- (b) A copy of any document sent by the board of the offeree to its shareholders in connection with the tender offer must be lodged with the Council Executive at the same time as it is posted.

#### **4.4 ANNOUNCEMENT OF THE RESULT OF A TENDER OFFER**

The result of a tender offer must be announced by 09.00 on the business day following the close of the tender.

#### **4.5 PROHIBITION OF FURTHER TRANSACTIONS DURING A TENDER OFFER**

The buyer in a tender offer may not otherwise acquire or dispose of any shares carrying voting rights in the company or any rights over such shares between the time of the publication of the tender offer and the time when the result of the tender offer is announced.

## 5. PERSONS ACTING BY AGREEMENT OR UNDERSTANDING

- 5.1 Where two or more persons act by agreement or understanding in the acquisition by one or more of them of shares carrying voting rights in a company, or rights over such shares, their holdings and acquisitions must be aggregated and treated as a holding or acquisition by one person for the purpose of the SARs. Each person acting in such manner must ensure that the obligations arising under the SARs are fulfilled.
- 5.2 Where persons are required by this Rule to aggregate their holdings, and they hold shares or rights over shares representing between 15% and 30% of the voting rights in a company, disposals resulting in the aggregate holdings of shares or rights over shares decreasing below any whole percentage level should be notified to the company and Council Executive and published on the CSX News Service.

A specimen disclosure form is contained in Appendix 1. Disclosures under this Rule should follow that format.

APPENDIX 1.

# DISCLOSURE FORMS

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Lodge with the Cayman Islands Stock Exchange. A copy must also be sent to the company the shares of which are acquired or sold.

Date of disclosure \_\_\_\_\_

## DISCLOSURE UNDER RULE 7.1 OF THE CSX CODE ON TAKE-OVERS AND MERGERS

Date of dealing \_\_\_\_\_

Dealing in \_\_\_\_\_ (name of company)

(1) Class of securities (e.g. ordinary shares) \_\_\_\_\_

(2) Number purchased	Number Sold	Price Per Unit

(3) Resultant total of the same class owned or controlled (and percentage of class)  
\_\_\_\_\_ ( %)

(4) Party making disclosure \_\_\_\_\_

(5) EITHER (a) Name of purchaser/vendor (See Note 1 below)  
OR (b) If dealing for discretionary clients(s), name of fund management organisation

\_\_\_\_\_

Signed, for and on behalf of the party names in 5 (a) or (b) above	
Print name of signatory	Telephone number and extension

**Note 1.**

Specify owner, not nominee company. If relevant, also identify controller or owner, e.g. where an owner normally acts on instructions of a controller.

*(Form continues...)*

**Note 2.**

Disclosure might be made for more than one reason. If so, state all reasons.

**Note 3.**

Specify which offeror if there is more than one.

**Note 4.**

When an arrangement exists with any offeror, with the offeree company or with an associate of any offeror or of the offeree company in relation to relevant shares, details of such arrangement must be disclosed.

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For full details of disclosure requirements, see Rule 7 of the Code. If in doubt, contact the Cayman Islands Stock Exchange

Lodge with the Cayman Islands Stock Exchange. A copy must also be sent to the company the shares of which are acquired.

Date of disclosure \_\_\_\_\_

## DISCLOSURE UNDER RULE 3 OF THE RULES GOVERNING SUBSTANTIAL ACQUISITIONS OF SHARES ("SARs")

Date of acquisition \_\_\_\_\_

Acquisition in \_\_\_\_\_ (name of company)

(1) Class of voting shares (eg ordinary shares)	Number of shares/rights over shares acquired	If rights over shares acquired, as opposed to the shares themselves, specify nature of rights
_____	_____ shares	_____
_____	_____ rights	_____

(2) Resultant total holding of voting shares (and % of total voting shares in issue)	Resultant total holding of rights over shares (and % of total voting shares in issue)	Total percentage
_____ ( %)	_____ ( %)	_____ ( %)

(3) Party making disclosure \_\_\_\_\_

(4) (a) Name of person acquiring shares or rights over shares \_\_\_\_\_

and, if different, beneficial owner \_\_\_\_\_

(b) names of any other persons acting by agreement or understanding (see SAR 5)

\_\_\_\_\_

Signed, for and on behalf of the party names in (3) above	
Print Name of signatory	Telephone Number and Extension

**Note.** Under Rule 5.1 of the SARs the holdings of and acquisitions by persons acting by agreement or understanding must be aggregated and treated as a holding of or acquisition by one person. Rule 5.2 of the SARs requires persons who must aggregate holdings to disclose certain disposals. Such person should complete the disclosure form relating to Rule 5.2 of the SARs.



Lodge with the Cayman Islands Stock Exchange. A copy must also be sent to the company the shares of which are sold.

Date of disclosure \_\_\_\_\_

## DISCLOSURE UNDER RULE 5.2 OF THE RULES GOVERNING SUBSTANTIAL ACQUISITIONS OF SHARES ("SARs")

Date of sale \_\_\_\_\_

Sale of \_\_\_\_\_ (name of company)

(5) Class of voting shares (eg ordinary shares)	Number of shares/rights over shares sold	If rights over shares sold, as opposed to the shares themselves, specify nature of rights
_____	_____ shares	_____
	_____ rights	_____

(6) Resultant total holding of voting shares (and % of total voting shares in issue)	Resultant total holding of rights over shares (and % of total voting shares in issue)	Total percentage
_____ ( %)	_____ ( %)	_____ ( %)

(7) Party making disclosure \_\_\_\_\_

(8) (a) Name of person selling shares or rights over shares \_\_\_\_\_  
and, if different, beneficial owner \_\_\_\_\_

(c) Names of any other persons acting by agreement or understanding  
\_\_\_\_\_

Signed, for and on behalf of the party names in (3) above	
Print name of signatory	Telephone number and extension

For full details of the SARs disclosure requirements, see Rules 3 and 5 of the SARs.



## APPENDIX 2.

# FEES

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Charges are payable by the offeror on offer documents as set out below.

The document charges are subject to periodic review; until further notice they are payable on all offers valued at US\$1 million or more. The amount of the charge will depend on the value of the offer according to the scale set out below.

### 1. SCALE OF DOCUMENT CHARGES

Value of the offer US\$ million	Charge US\$	Charge as a maximum percentage of the value of the offer %
1 to 5	2,000	0.20
Over 5 to 10	8,500	0.17
Over 10 to 25	14,000	0.14
Over 25 to 50	27,500	0.11
Over 50 to 100	40,000	0.08
Over 100	50,000	0.05

### 2. VALUATION OF OFFER FOR DOCUMENT CHARGES

When the charge falls to be calculated on the basis of the value of the securities to be issued as consideration, it should be computed by reference to the closing price of the relevant securities at the last practicable date before the publication of the offer document as stated in that document and/or, as the case may be, by reference to the estimated value of any unlisted securities consideration given in the document in accordance with Rule 21.9 of the Code.

Where there are alternative offers, the alternative with the highest value will be used to calculate the value of the offer. Offers for all classes of equity share capital will be included in the calculation of the value of the offer, but offers for non-equity share capital, convertibles, options, etc. will not.

### 3. MERGERS

When a merger is effected by offers for both companies by a new company created to make the offers, the document charge will be determined by the value of the lower of the two offers.

**4. TENDER OFFERS**

The document charge does not apply to tender offers under the SARs.

**5. PAYMENT OF DOCUMENT CHARGES**

The financial adviser to the offeror or, if there is no financial adviser, the offeror is responsible for the payment of the document charge to the Council Executive. Payments should be sent to the Council Executive when documents are posted.

In all cases a note setting out the calculation of the document charge should accompany the offer document sent to the Council Executive. If the offer is revised, a similar note should be sent to the Council Executive with the revised offer document and any necessary further payment.