Practice Note 21 (PN21) – Note 6(a) to Rule 26.1 – Acquisitions of voting rights by members of concert group

1. The purpose of this Practice Note is to provide guidance on the grant of waivers of the mandatory offer obligation under Note 6(a) to Rule 26.1 of the Takeovers Code.

2. Rule 26.1 lies at the heart of the Code and sets out circumstances when a mandatory takeover offer obligation is incurred. This reflects a fundamental principle of the Takeovers Code that all shareholders must be treated equally as set out in General Principle 1 which reads:

> "All shareholders are to be treated even-handedly and all shareholders of the same class are to be treated similarly."

3. Rule 26.1 requires a general offer to be made in the event that a person acquires 30% or more of the voting rights attaching to the shares of a company to which the Takeovers Code applies, unless such obligation is waived as follows:

> "Subject to the granting of a waiver by the Executive, when
>
> (a) any person acquires, whether by a series of transactions over a period of time or not, 30% or more of the voting rights of a company;
>
> (b) two or more persons are acting in concert, and they collectively hold less than 30% of the voting rights of a company, and any one or more of them acquires voting rights and such acquisition has the effect of increasing their collective holding of voting rights to 30% or more of the voting rights of the company;
>
> (c) any person holds not less than 30%, but not more than 50%, of the voting rights of a company and that person acquires additional voting rights and such acquisition has the effect of increasing that person's holding of voting rights of the company by more than 2% from the lowest percentage holding of that person in the 12 month period ending on and inclusive of the date of the relevant acquisition; or
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> (d) two or more persons are acting in concert, and they collectively hold not less than 30%, but not more than 50%, of the voting rights of a company, and any one or more of them acquires additional voting rights and such acquisition has the effect of increasing their collective holding of voting rights of the company by more than 2% from the lowest collective percentage holding of such persons in the 12 month period ending on and inclusive of the date of the relevant acquisition;

(3) the relationship between the persons acting in concert and how long they have been acting in concert."

11. Points to note:

(a) Whilst Note 6(a) provides that the above criteria "will" be taken into account, it is clear that the Executive and the Takeovers Panel may also take into account all other relevant facts and circumstances.

(b) In determining the leader of the concert group for the purpose of Note 6(a)(i) above,