

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*

- (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;*

that person shall extend offers, on the basis set out in this Rule 26, to the holders of each class of equity share capital

relatives or related trusts, and the acquirer has acquired the voting rights from another member of such group of persons.”

9. Points to note about Notes 6(a)(i) and (ii):

- (a) Notes 6(a)(i) and (ii) are confined to acquisitions by a member of a concert group from another member of the concert group when the relationship is particularly close, being either a company with its subsidiaries or an individual together with his/her close relatives, related family trusts and companies controlled by the individual or close relatives.
- (b) Note 6(a)(i) relates to a group consisting of a parent company and its subsidiaries and is interpreted strictly in accordance with the definition of “subsidiary” in the Takeovers Code. The exclusion of associated companies (which are included in class (1) of the presumption of acting in concert in the Codes as presumed concert parties) is intentional. Unless a parent subsidiary or fellow subsidiary relationship can be demonstrated, based on the definition of “subsidiary” in the Takeovers Code, the concession provided for in sub-paragraph (i) will not be available.
- (c) Similarly, Note 6(a)(ii) is interpreted strictly. The application of Note 6(a)(ii) by its wording, and as it has been applied for many years by the Executive, relates specifically to transfers between persons who are closely related, that is family members.

10. If Notes 6(a)(i) and (ii) do not apply, Note 6(a) sets out the following criteria that “will” be taken into account in considering whether to grant a waiver:

“In addition to the factors set out in Note 7 to this Rule 26.1, the factors which the Executive will take into account in considering whether to waive the obligation to make an offer include:—

- (i) *whether the leader of the group or the largest individual shareholding has changed and whether the balance*

between the shareholdings in the group has changed significantly;

- (ii) the price paid for the shares acquired; and*
- (iii) the relationship between the persons acting in concert and how long they have been acting in concert.”*

11.

very high price for the voting rights; (iii) the parties negotiate options over the retained voting rights; and (iv) the purchaser's nomination of board representation is supported by the vendor. Again these factors are highly fact specific and are examined on a case-by-case basis.

Announcement of ruling granted

12. In the interests of transparency and to ensure an informed market, the Executive strongly encourages an applicant to inform the offeree company promptly about a waiver granted