

Practice Note 27 – Severe Weather Arrangements for Codes-regulated Transactions

Purpose

1. This Practice Note provides guidance on matters regulated under the Takeovers Code and the Share Buy-backs Code (collectively, the “**Codes**”) in the event of severe weather.

Background

2. As announced by the Stock Exchange of Hong Kong (“**Stock Exchange**”)¹ trading, clearing and settlement services and operations in the Hong Kong securities and derivatives market will remain operational in the event of severe weather with effect from 23 September 2024.
3. For the purpose of this Practice Note, “severe weather” refers to the scenario where Typhoon Signal No. 8 or above, a Black Rainstorm Warning², or the “Extreme Conditions” warning³ is in force. If a severe weather condition is in effect during a trading session under the new arrangements of the Stock Exchange, the relevant trading day is described herein as a severe weather trading day.

Effect of severe weather on timing requirements under the Codes

4. Under the Codes, a business day is defined as “*a day on which the Stock Exchange is open for the transaction of business.*” Therefore, as long as the Stock Exchange is open for trading on a day, any such day (including a severe weather trading day) shall count as a business day for the purpose of the related timing requirements under the Codes.
5. As electronic submission, disclosure and dissemination of documents and electronic payment of fees are either permitted or mandated under the Codes, the Executive observes that market participants are generally able to follow the timetable prescribed by the Codes regardless of the weather conditions.
6. If relevant parties encounter genuine practical difficulties in complying with any Code requirements because of severe weather, the Executive should be consulted at the earliest opportunity.
7. The Executive recognises that certain processes still customarily involve hard copy and are likely to be disrupted in the event of severe weather. For example, shareholders of an offeree company will not be able to tender physical acceptance forms on a closing date when outlets of receiving agents are closed; and suspension of postal services may make it impossible for an offeror to despatch paper cheques or share certificates to relevant shareholders in time.

¹ See the conclusions paper published by the Stock Exchange on 18 June 2024.

² As issued by the Hong Kong Observatory.

³ As announced by the HKSAR Government.

8. The Executive considers it appropriate to adopt a pragmatic approach in applying the Takeovers Code requirements in respect of the following deadlines (“**Key Deadlines**”) under severe weather conditions:
- (a) The closing date for an offer and the latest time for acceptance under Rules 15.1, 15.8 and 28.4, and the submission and publication deadline for a closing announcement under Rule 19.1;
 - (b) The final day for an offer under Rule 15.5;
 - (c) The final time for an acceptor to exercise withdrawal rights under Rule 17 and the last day for withdrawal under Note 2 to Rule 18;
 - (d) The last day for an offeror to despatch or post relevant share certificates, or make the share certificates available for collection under Rules 17 and 20; and
 - (e) The last day for an offeror to settle consideration under Rule 20.
9. Under the pragmatic approach, if any severe weather condition is in effect at 12:00 noon and/or thereafter on a day on which a Key Deadline (including an extended Key Deadline⁴) falls, the Executive would expect the deadline to be postponed to the next business day. In addition, timing requirements defined with reference to the relevant Key Deadline under the Codes⁵ would be adjusted accordingly. Provided that this general mechanism for adjusting the Key Deadlines and other related dates under severe weather conditions is set out in an offer⁶ document, there is no need to apply to the Executive for a specific consent or ruling when the offer timetable is so adjusted as a result of severe weather.
10. The aforesaid adjustment mechanism for the Key Deadlines and related dates is illustrated by the following example:

Date of despatch of offer document	First closing date specified in the relevant offer document	Days on which severe weather conditions are in effect at 12:00 noon and/or thereafter	Postponed first closing date	Adjusted first day for the exercise of the withdrawal rights ⁷ under Rule 17
11 September 2024	2 October 2024	2 October 2024 3 October 2024	4 October 2024	25 October 2024 (i.e. the 21st day after the postponed first closing date)

⁴ This means that if a severe weather condition is also in effect at any time from 12:00 noon to the submission deadline for a draft update announcement on any date on which an extended Key Deadline falls, the extended Key Deadline will be further postponed to the next business day. See paragraph 15 below for the deadline for submission of a draft update announcement.

⁵ For example, Rule 17 of the Takeovers Code provides that an acceptor shall be entitled to withdraw his acceptance after 21 days from the first closing date of the offer.

⁶ “Offer” is defined in the Codes to include schemes of arrangement which have a similar commercial effect to takeovers and mergers.

⁷ If the offer has not become unconditional as to acceptances by 25 October 2024.

11. For the avoidance of doubt, the approach described in paragraphs 8 to 9 does not apply to the deadline for dealing disclosures under Rule 22 or the despatch of a shareholders' document⁸ because these processes can normally be done electronically. Applications for a time extension in circumstances other than those described in paragraphs 8 and 9 will be considered on a case-by-case basis.

Announcement and disclosure about arrangements under severe weather

12. Offer documents⁹ should explain in the "Timetable" section the general arrangements under severe weather conditions. This should include how the Key Deadlines and other related dates (where applicable) are to be adjusted in the event of severe weather.
13. Similarly, in relation to meetings convened for obtaining shareholders' approval of a transaction¹⁰ regulated under the Codes, the relevant notices and circulars should set out the meeting arrangements in the event of severe weather.
14. To ensure that shareholders are apprised of the latest status of a Codes-regulated transaction and their rights under the Codes or applicable laws, rules and regulations, an announcement should be made to update the market as soon as practicable if the transaction timetable is to be postponed as a result of severe weather. The announcement should set out clearly the revised timetable.
15. For the avoidance of doubt, a draft of the relevant update announcement should in all cases¹¹ be submitted to the Executive for vetting at the earliest opportunity and in any event no later than 4:00 p.m. on the affected date (or such later time as the Executive may in exceptional circumstances permit).

Note: This Practice Note supersedes, with immediate effect, the guidance set out in the article titled "Arrangements for closing of offers on days affected by adverse weather" contained in Takeovers Bulletin Issue No.10 (September 2009).

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⁸ To the extent that electronic dissemination of shareholders' documents is permitted under the applicable laws and regulations and the relevant constitutional documents (where applicable). See Rule 8.7 of the Takeovers Code.

⁹ Including circulars relating to a scheme of arrangement or capital reorganisation regulated under the Codes.

¹⁰ Including whitewashes and special deals.

¹¹ A draft update announcement should be submitted to the Executive even if it relates to the postponement of a Key Deadline under the adjustment mechanism described in paragraph 9.