

Takeovers Executive of the SFC publicly censures Wonderful Sky Financial Group Holdings Limited and Liu Tianni and publicly criticises Liu Kiki Ching Tung for breaching the Code on Share Buy-backs

Sanctions

1. The Securities and Futures Commission (“**SFC**”) today publicly censures Wonderful Sky Financial Group Holdings Limited (“**Company**”) and Liu Tianni (“**Chairman Liu**”) and publicly criticises Liu Kiki Ching Tung (“**Kiki Liu**”) in respect of a buy-back transaction in the shares of the Company conducted on 27 March 2020 in breach of the Code on Share Buy-backs.

Background and key facts

2. The shares of the Company (stock code: 1260) (“**Shares**”) have been listed on the Main Board of the Stock Exchange of Hong Kong Limited (“**Stock Exchange**”) since 2012. The Company is an investment holding company and its subsidiaries are principally engaged in the provision of financial public relations services and the organisation and coordination of international roadshow services.
3. Chairman Liu is the Chairman of the board of directors, Chief Executive Officer and an executive director of the Company. Chairman Liu and his wife are the controlling shareholders of the Company through an investment holding company. Kiki Liu, the daughter of Chairman Liu, was a deputy general manager of the Company at the material time.
4. On 27 March 2020, the Company bought back 42,500,000 Shares at a price of HK\$0.4 per Share, representing approximately 3.56% of the then issued share capital of the Company (“**Subject Buy-back**”) from the vendor (“**Vendor**”).
5. The Subject Buy-back was not conducted in the open market on the Stock Exchange but via a block trade, a type of manual trade which is pre-arranged and privately negotiated and executed. Prior to the Subject Buy-back, its terms (ie, the sale of 42,500,000 Shares at a price of HK\$0.4 per Share) were negotiated and agreed upon by the Company and the Vendor.

Relevant provisions of the Codes on Takeovers and Mergers and Share Buy-backs (Codes)

6. A share buy-back is defined in the Codes as *“a buy-back of shares, or an offer to buy back, redeem or otherwise acquire shares of an offeror made by an offeror, including a privatisation, scheme of arrangement or other form of reorganisation that consists in whole or in part of such an offer.”*
7. An off-market share buy-back is defined as *“a share buy-back that is not a share buy-back by general offer, an exempt share buy-back or an on-market share buy-back.”*
8. An on-market share buy-back is defined as *“a share buy-back made by:- (1) a company having a listing on the Stock Exchange through the facilities of the Stock Exchange in accordance with the Listing Rules; ...”*.
9. Rule 1 of the Code on Share Buy-backs provides that: *“[a] company may only engage in the following types of share buy-back:-*

- (a) *an on-market share buy-back;*
- (b) *an off-market share buy-back approved in accordance with Rule 2;*
- (c) *an exempt share buy-back; and*
- (d) *a share buy-back by general offer in accordance with the General Principles and Rules of the Codes.”*

10. Rule 2 of the Code on Share Buy-backs provides that “[o]ff-market share buy-backs must be approved by the Executive before a repurchasing company acquires any shares pursuant to such share buy-back. Such approval will normally be conditional upon the following:–

- (a) *approval of the proposed off-market share buy-back by at least three-fourths of the votes cast on a poll by disinterested shareholders in attendance in person or by proxy at a general meeting of shareholders duly convened and held to consider the proposed transaction...”*

The SFC’s comments

- 11. Rule 2 of the Code on Share Buy-backs is derived from, among other things, General Principle 1 of the Codes and the fundamental requirement that “[a]ll shareholders are to be treated even-handedly and all shareholders of the same class are to be treated similarly.” General Principle 1 of the Codes lies at the heart of the Codes and is fundamental to its operation.
- 12. An on-market share buy-back would not normally have implications under General Principle 1 as all shareholders have access to on-market trading and are therefore provided with an equal opportunity to participate in the buy-back. In an off-market share buy-back, however, the offer to buy back shares is only available to a limited number of shareholders. In this sense, the offer is not available to all shareholders and hence shareholders are not treated equally. This is reflected in the high voting threshold (75% of the disinterested shares) for shareholders’ approval of off-market share buy-backs.
- 13. The Subject Buy-back constituted a clear breach of Rules 1 and 2 of the Buy-backs Code, in that (i) it was not an “on-market share buy-back”, but (ii) was an “off-market share buy-back” with no prior approval by the Executive as required under Rule 2 of the Code on Share Buy-backs.
- 14. The Company, in conducting the Subject Buy-back, was clearly in breach of the Code on Share Buy-backs. It submitted that no advice was obtained from its compliance or legal departments or from professional advisers prior to the execution of the block trade to ensure that the Subject Buy-back complied with all relevant rules and regulations.
- 15. The Subject Buy-back caused real prejudice to the shareholders of the Company, who were deprived of the opportunity to vote on an important decision concerning a potential exit from the Company on the same terms as those offered to the Vendor. Shareholders were entitled to, but failed to receive, equal and fair treatment from the Company.

16. Chairman Liu was the main decision-maker for the Subject Buy-back in that he: (i) decided to buy back shares of the Company; (ii) instructed Kiki Liu to discuss with the Vendor to sell its shareholding back to the Company, following which the Subject Buy-back was concluded. As the Chairman, Chief Executive Officer and an executive director of the Company, Chairman Liu is plainly and reasonably expected to have knowledge of and ensure the Company's compliance with regulatory requirements including the Code on Share Buy-backs, and at the very least ought to have sought professional advice or consulted the Executive before conducting or approving the Subject Buy-back. His conduct in this case fell short of the standards expected of listed company directors under the Codes.
17. Kiki Liu had participated in the Subject Buy-back in that she liaised with the Vendor and negotiated the Subject Buy-back. However, considering that she was not involved in the decision-making process and was merely implementing the instructions of Chairman Liu, a public criticism against her is a proportionate and appropriate sanction.
18. The Executive expects persons who are actively engaged in the securities market to comply with the Code on Share Buy-backs and this includes seeking professional advice as and when needed. This is particularly the case for listed company directors who must use the best of their abilities to comply with the Code on Share Buy-backs. In case of doubt, the Executive should be consulted at the earliest opportunity before embarking on a course of action which might have implications under the Code on Share Buy-backs.
19. The Company, Chairman Liu and Kiki Liu have each accepted that the Subject Buy-back breached the Code on Share Buy-backs and that they have failed to comply with the Code on Share Buy-backs in relation to the Subject Buy-back, and consented to the disciplinary action taken against each of them under section 12.3 of the Introduction to the Codes.
20. The Executive reminds practitioners and parties who wish to take advantage of the securities markets in Hong Kong that they should conduct themselves in matters relating to takeovers, mergers and share buy-backs in accordance with the Codes. If there is any doubt about the application of the Codes, the Executive should be consulted at the earliest opportunity.

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