

Takeovers Executive of the SFC publicly criticises Cheung Chi Shing for breaching Note 4 to Rule 26.2 under the Code on Takeovers and Mergers

Sanctions

1. The SFC publicly criticises Mr Cheung Chi Shing (**Mr Cheung**) for failure to obtain the relevant regulatory approval before triggering an obligation to make a mandatory general offer for Styland Holdings Limited (**Company**) in breach of Note 4 to Rule 26.2 of the Code on Takeovers and Mergers (**Takeovers Code**).

Background and key facts

2. The Company listed on the Main Board of the Stock Exchange of Hong Kong Limited on 5 December 1991. The Company is a Hong Kong-based investment holding company principally engaged in financial businesses.
3. Mr Cheung, Ms Yeung Han Yi Yvonne (the spouse of Mr Cheung, **Ms Yeung**), K. Y. Limited (a company ultimately owned by Mr Cheung and Ms Yeung, **KYL**), and Mr Cheung Hoo Yin (a son of Mr Cheung) are parties acting in concert under the Takeovers Code (**Concert Group**).
4. On 5 July 2022, Mr Cheung acquired 30,623,172 shares of the Company (representing approximately 4.32% of the shareholding interest in the Company) from two vendors (**Acquisitions**). Upon the completion of the Acquisitions, the Concert Group's aggregate shareholding in the Company increased from 27.52% to 31.84%. As such, Mr Cheung triggered an obligation to make a mandatory conditional general offer for all the shares of the Company pursuant to Rule 26.1 of the Takeovers Code and for all the outstanding convertible bonds of the Company pursuant to Rule 13.5 of the Takeovers Code (**Offers**).
5. Four subsidiaries of the Company¹ (**Licensed Corporations**) are corporations licensed to carry out regulated activities under the Securities and Futures Ordinance (**SFO**).
6. Under the SFO, a person shall not become and continue to be a substantial shareholder (as defined under the SFO) of a licensed corporation without first being approved by the SFC under Section 132 of the SFO (**S132 Approval**), and a person who contravenes the aforementioned commits an offence under Section 131 of the SFO. In the event the Offers become unconditional under the Takeovers Code, Mr Cheung (and parties acting in concert with him) would hold more than 35% of the shares of the Company and they would become new substantial shareholders (as defined under the SFO) of the Licensed Corporations. However, the S132 Approval was not obtained before the obligation to make the Offers was triggered.
7. Mr Cheung accepted that he had not obtained the S132 Approval before triggering an obligation to make the Offers. Mr Cheung was therefore in breach of Note 4 to Rule 26.2 of the Takeovers Code, which requires an offeror to obtain relevant regulatory approvals before he triggers an obligation to make a general offer under Rule 26.1 of the Takeovers Code.

¹ The four subsidiaries are (i) Ever-Long Futures Limited, (ii) Ever-Long Research Limited, (iii) Ever-Long Securities Company Limited, and (iv) Ever-Long Capital Management Limited.

Relevant provisions of the Takeovers Code

8. Rule 26.1 of the Takeovers Code provides that “[s]ubject to the granting of a waiver by the Executive, when...

(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;

that person shall extend offers, on the basis set out in this Rule 26, to the holders of each class of equity share capital of the company, whether the class carries voting rights or not...”

9. Rule 26.2 of the Takeovers Code provides that “[e]xcept with the consent of the Executive:

(a) offers made under this Rule 26 must be conditional only upon the offeror having received acceptances in respect of voting rights which, together with voting rights acquired or agreed to be acquired before or during the offer, will result in the offeror and any person acting in concert with it holding more than 50% of the voting rights; and

(b) no acquisition of voting rights which would give rise to a requirement for an offer under this Rule 26 may be made if 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.”

10. Note 4 to Rule 26.2 further provides that:

“Regulatory approvals

No acquisition of voting rights which would give rise to a requirement for an offer under this Rule 26 may be made if such acquisition or offer may require prior approval from a regulatory body (in relation to merger control or otherwise). The restrictions in Rule 26.2 mean that the offeror cannot make an offer conditional upon any such regulatory approval. A potential offeror under this Rule 26 must seek the relevant regulatory approval before he triggers an obligation to make a general offer under Rule 26.1.

If an offeror triggers a mandatory offer without obtaining the relevant regulatory approval he will be in breach of this Note 4 and subject to possible disciplinary action.”

Breach of Note 4 to Rule 26.2 of the Takeovers Code

11. Upon the completion of the Acquisitions, Mr Cheung triggered an obligation to make the Offers. In the event that the acceptance condition is satisfied and the Offers become unconditional, Mr Cheung (and parties acting in concert with him) would become substantial shareholders (as defined under the SFO) of the

Licensed Corporations, but they had not obtained the S132 Approval. As such, the Offers could not be made as required under the Takeovers Code.

12. It follows that Mr Cheung breached Note 4 to Rule 26.2 of the Takeovers Code as he did not obtain the S132 Approval prior to the completion of the Acquisitions which gave rise to an obligation to make the Offers.

Remedial actions taken by Mr Cheung

13. Upon discovering that the S132 Approval had not been obtained prior to triggering an obligation to make the Offers, in late July 2022, Mr Cheung and his professional advisers brought these matters to the attention of the Executive and discussed the proposals for remedial action, including the making of the Offers after obtaining the S132 Approval.
14. In light of the relevant requirements under the Takeovers Code and the SFO, Mr Cheung and Ms Yeung transferred their entire shareholding interest in the Company (including those held by KYL) to their three children² (**Cheung's Children**) before the Offers were made:
 - a. In accordance with the proposal, Cheung's Children and Kevonia Family Limited³, a company held by Cheung's Children in equal shares (**Offeror**), applied to the SFC for the S132 Approval, which the SFC granted on 8 December 2022.
 - b. Mr Cheung, Ms Yeung and KYL transferred their entire shareholding interest in the Company to the Offeror on 15 December 2022 at an aggregate consideration of \$4.
15. On 16 December 2022, the Offeror announced that it would make the Offers in accordance with Rule 26.1 of the Takeovers Code around five months after the Acquisitions. The Offers were made by the Offeror on 20 January 2023, became unconditional on 3 February 2023 and closed on 17 February 2023.

The SFC's comments

16. The Executive has carefully considered the evidence in this case including Mr Cheung's submission that the breach of the Takeovers Code was unintentional. Mr Cheung explained that he could not recall the shareholding interest held by his son (Mr Cheung Hoo Yin) when he completed the Acquisitions. Mr Cheung only realised after making enquiries with his son and seeking professional advice that the aggregate interest of the Concert Group had exceeded 30% upon the completion of the Acquisitions and an obligation to make the Offers had been triggered, but the S132 Approval had not been obtained. Mr Cheung took prompt remedial actions upon discovering the breach. The Offers were made by the Offeror on 20 January 2023, became unconditional on 3 February 2023 and closed on 17 February 2023, as mentioned above.

² The names of Cheung's Children are Mr Cheung Hoo Win, Ms Cheung Lok Chi and Mr Cheung Hoo Yin.

³ Kenvonia Family Limited, a company incorporated under the laws of Hong Kong with limited liability on 29 September 2022, is approximately 33.33% owned by Mr Cheung Hoo Win, 33.33% by Ms Cheung Lok Chi and 33.33% by Mr Cheung Hoo Yin. They are also the directors of the Offeror.

17. While remedial measures were taken by the Concert Group to make the Offers, Mr Cheung accepted that he breached the requirement under Note 4 to Rule 26.2 of the Takeovers Code and agreed to the disciplinary action against him under section 12.3 of the Introduction to the Codes on Takeover and Mergers and Share Buy-backs (the **Codes**).
18. Note 4 to Rule 26.2 relates to Rule 26 of the Takeovers Code which is one of the most fundamental provisions in the Takeovers Code. An offeror should ensure that all requisite regulatory approvals are obtained before making any acquisition of voting rights which would give rise to an obligation to make a general offer under Rule 26.1 of the Takeovers Code. The Executive expects persons who take advantage of the securities markets in Hong Kong to comply with the Codes. This includes seeking professional advice as and when needed. 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 Codes.
19. The Executive takes this opportunity to remind 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.

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