



Takeovers Bulletin

Highlights

- Takeovers Panel's decision on granting a special waiver from the general offer obligation
- Takeovers Panel's decision on the offer price in a mandatory general offer
- Quarterly update on the activities of the Takeovers Team

Takeovers Panel's decision on granting a special waiver from the general offer obligation

The Takeovers Panel has ruled that a special waiver from the general offer obligation may be granted to Broad Gongga Investment Pte. Ltd. as a result of a possible foreclosure sale by third-party creditors of Jinke Property Group Company Limited of its interest in Jinke Smart Services Group Co. Ltd. in a seller-forced disposal.

Broad Gongga consulted the Executive on whether a seller-forced disposal would trigger a mandatory general offer obligation. While the Executive would not normally consider hypothetical questions, the matter was referred to the Panel as there were novel, important or difficult points at issue. The Panel met on 25 July 2022 to consider the case.

Both Broad Gongga and Jinke Property are shareholders of Jinke Smart Services and are acting in concert. In the event of a seller-forced disposal, Broad Gongga would become the single largest shareholder and the leader of the concert group. Pursuant to Note 1 to Rule 26.1 of the Takeovers Code, the seller-forced disposal would trigger

a mandatory general offer on the part of Broad Gongga for Jinke Smart Services.

The Panel considered the special circumstances surrounding the seller-forced disposal, including that Broad Gongga would have no control over the process, and decided that a special waiver from the general offer obligation would, in principle, be appropriate. However, as the seller-forced disposal had yet to occur, the Panel did not consider it appropriate to grant a waiver in a hypothetical situation. Broad Gongga should apply for the special waiver as and when a seller-forced disposal occurs or is imminent, and the Executive should consider the application in accordance with the principles decided by the Panel in the decision.

A copy of the [Panel's decision](#) issued on 30 August 2022 is available in the "[Regulatory functions – Corporates – Takeovers and mergers – Decisions and statements – Takeovers and Mergers Panel and Takeovers Appeal Committee decisions and statements](#)" section of the SFC website.

Takeovers Panel's decision on the offer price in a mandatory general offer

The Takeovers Panel has ruled that in the mandatory general offer for Suncity Group Holdings Limited¹ by Major Success Group Limited the appropriate offer price should be HK\$0.0690 per share. This figure represents the total consideration paid by Major Success to Champion Trade Group Limited for the acquisition of Suncity's shares and other security assets, divided by the total number of Suncity shares acquired by Major Success.

On 16 May 2022, Major Success' advisers submitted a draft firm intention announcement to the Executive for vetting. The Executive expressed concerns about how the offer price was determined and referred the matter to the Panel as there were particularly novel, important or difficult points at issue. The Panel met on 11 August 2022 to consider the referral.

Champion Trade took assignment of an overdue loan extended by third parties to Star Soul Investments Limited with full rights and benefits of the securities for the loan which included a controlling stake in Suncity and other Suncity securities. Immediately upon the assignment, Champion Trade sold the Suncity shares and other secured assets to Major Success triggering a mandatory general offer. Star Soul is owned by Chau Cheuk Wa, the ex-chairman and ex-executive director of Suncity. Major Success and Champion Trade are owned by Lo Kai Bong, an executive director of Suncity.

The Panel considered that the transaction involved a discharge of Chau's liability under the loan, which was a favourable condition to him as a shareholder, and this constituted a special deal under the Takeovers Code. It did not matter whether Chau made an overall gain or loss in the arrangement, or whether or not he was involved in the negotiation of the transaction. Given that the benefit received by Chau is quantifiable, it should be extended to all other Suncity shareholders and reflected in the offer price.

Rule 25 of the Takeovers Code aims to prevent a shareholder from receiving more than others in the context of an offer and to ensure that shareholders are equally treated under General Principle 1. However, not all special deals are prohibited and the Executive may grant consent to a special deal subject to the procedural safeguard (for example, majority shareholders' approval) provided under the Notes to Rule 25 and Practice Note 17. By completing the transaction, Major Success had already breached Rule 25, and the procedural safeguard under the Code was no longer available as it could not be used to ratify a special deal that had been completed.

The Executive would like to take this opportunity to remind market practitioners to consult the Executive in advance when there is any doubt about the application of the Codes or whether a proposed course of conduct accords to the Codes.

A copy of the [Panel's decision](#) issued on 7 September 2022 is available in the "[Regulatory functions – Corporates – Takeovers and mergers – Decisions and statements – Takeovers and Mergers Panel and Takeovers Appeal Committee decisions and statements](#)" section of the SFC website.

¹ Now known as LET Group Holdings Limited.

Quarterly update on the activities of the Takeovers Team

In the three months ended 30 June 2022, we received 10 takeovers-related cases (including privatisations, voluntary and mandatory general offers and off-market and general-offer share buy-backs), four whitewashes and 65 ruling applications.

Useful links

- The Codes on Takeovers and Mergers and Share Buy-backs
- Practice notes
- Decisions and statements
- Previous *Takeovers Bulletins*

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