



Takeovers Bulletin

Highlights

- Public censure and cold shoulder order imposed on Chu Hing Tsung for breaching the mandatory general offer obligation
- Public censure of Wonderful Sky and Liu Tianni and public criticism of Liu Kiki Ching Tung for breaching the Code on Share Buy-backs
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Public censure and cold shoulder order imposed on Chu Hing Tsung for breaching the mandatory offer obligation

On 25 January 2022, we publicly censured and imposed a 12-month cold shoulder order against Chu Hing Tsung for breaching the mandatory general offer obligation under Rule 26.1 of the Takeovers Code. Chu is denied direct or indirect access to the Hong Kong securities market until 24 January 2023.

Rong De Investments Limited has been the controlling shareholder of Zhuguang Holdings Group Company Limited since its listing in 2009. In 2012, Chu acquired shares in Rong De and, together with his brother Chu Muk Chi, obtained statutory control of Rong De as a result of a discloseable and connected transaction. The acquisition triggered a mandatory general offer under Note 8 to Rule 26.1 of the Takeovers Code, but no general offer was made at that time.

While the parties had sought legal advice for the 2012 transaction, they were not advised of the implications under the Takeovers Code. Chu's action nonetheless deprived Zhuguang's shareholders of the right to receive an offer and he agreed to the disciplinary action against him.

A copy of the [Executive Statement](#) dated 25 January 2022 can be found in the "[Regulatory Functions – Corporates – Takeovers and mergers – Decisions and statements – Executive decisions and statements](#)" section of the SFC website.

Parties who wish to take advantage of the securities markets in Hong Kong are reminded that they should conduct themselves in matters relating to takeovers, mergers and share buy-backs in accordance with the Codes on Takeovers and Mergers and Share Buy-backs (Codes). This includes seeking professional advice as needed. Professional advisers should ensure that their clients understand and abide by the Codes. If not, they may find that market facilities may be withheld from them by way of sanction in order to protect those who participate in them.

Public censure of Wonderful Sky Financial Group Holdings Limited and Liu Tianni and public criticism of Liu Kiki Ching Tung for breaching the Code on Share Buy-backs

On 17 March 2022, we publicly censured Wonderful Sky Financial Group Holdings Limited and Liu Tianni and publicly criticised Liu Kiki Ching Tung over a breach of the Code on Share Buy-backs¹.

In March 2020, Wonderful Sky bought back 42,500,000 shares by way of a block trade which was pre-arranged and pre-agreed between Wonderful Sky and the vendor. This constituted an off-market share buy-back which required the approval of the Executive and Wonderful Sky's disinterested shareholders, neither of which was obtained.

Liu Tianni, as the Chairman, Chief Executive Officer and an executive director of Wonderful Sky, was the main decision maker for the buy-back. Liu Kiki Ching Tung was a deputy general manager of Wonderful Sky at the material time and participated in implementing the buy-back under Liu Tianni's instructions.

All the parties accepted that they failed to comply with the Code on Share Buy-backs and consented to the disciplinary action taken against them.

A copy of the [Executive Statement](#) dated 17 March 2022 can be found in the "Regulatory Functions – Corporates – Takeovers and mergers – Decisions and statements – Executive decisions and statements" section of the SFC website.

The Executive expects persons who are actively engaged in the securities market to comply with the Codes and this includes seeking professional advice as and when needed. If there is any doubt about the application of the Codes, the Executive should be consulted at the earliest opportunity.

Close of offer period in winding-up proceedings

We mentioned in [Issue No. 52 \(March 2020\)](#) of the *Takeovers Bulletin* that an offer period may commence upon enforcement actions by lenders including the appointment of a receiver or a liquidator over a controlling block of shares. The offer period will cease when an offer is completed or when the possibility of an offer has been ruled out.

In cases where an offeree company becomes the subject of a winding-up petition during an offer period and an official receiver or other person is appointed as the provisional liquidator by a court, we will normally treat the offer period as being closed once we are notified or otherwise become aware of the appointment. Under section 182 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (CWUMPO), any disposition of the property of a company subject to winding-up, including any transfer of shares, made after the commencement of the winding-up is void unless the court orders otherwise. For companies which are incorporated outside Hong Kong, advisers should consult the Executive at the earliest opportunity to allow the Executive to decide on the appropriate treatment in those cases.

We will update the offer periods tables on the SFC website and close the offer period of the offeree company accordingly. We will also add a note in the closed offer period table to state that the

¹ On 13 January 2022, the SFC publicly announced the commencement of disciplinary proceedings against the same parties. For details, see the [press release](#).

offer period closed as a result of the operation of CWUMPO. We wish to remind advisers who are advising companies in financial distress during an offer period to keep the Executive informed of material developments, including the initiation of winding-up proceedings.

Market practitioners and parties involved in Codes transactions should subscribe for updates to offer periods and comply with the Codes in a timely manner. This includes the obligation to disclose dealings during an offer period required under Rule 22 of the Takeovers Code. You may subscribe for takeovers-related news and updates through this [link](#) by checking the "Takeovers & mergers" box under the Industry-related communication section.

Chairmen of shareholders' meetings approving matters under the Codes

A shareholder can normally appoint another person, including the chairman of the meeting, as proxy to attend and vote at a shareholders' meeting on his or her behalf. The proxy form typically provides that if a shareholder does not give direction as to whether the resolutions shall be voted for or against, the proxy shall vote or abstain at his or her discretion.

The Executive notes that in some meetings where matters under the Codes were to be voted on, it was proposed that a concert party of the offeror in question chair the meeting. Accordingly, that chairman (acting as proxy) has discretion as to how to vote the shares of the appointing shareholders if no directions are provided in the proxy forms. This is unsatisfactory as the offeror's concert parties are not disinterested or independent under the Codes and may not exercise their voting rights (or their votes may not be counted for the purposes of

the Codes). Accordingly, they should not exercise discretion on behalf of shareholders giving the proxy by assuming the role of the chairman of the shareholders' meeting.

Going forward, the Executive expects all meetings with Codes-related resolutions requiring approval of disinterested or independent shareholders to be chaired by a person who is disinterested and independent (as defined under the relevant provisions of the Codes). These meetings include, for example, court meetings for privatisation schemes and general meetings to approve delistings under Rule 2.2, whitewash waivers, special deals and share buy-backs. If in doubt, the Executive should be consulted.

Reappointments to the takeovers-related committees

We welcome the reappointments of members to the following committees with effect from 1 April 2022:

Takeovers and Mergers Panel (Panel and Takeovers Appeal Committee (Appeal Committee))

Ms Teresa KO, JP, Ms Celia LAM, Mr John MAGUIRE, Mr Mark SCHWILLE and Ms Benita YU (Deputy Chairmen of the Panel and members of the Appeal Committee); Mr Conrad CHAN, Ms Julia CHARLTON, Mr Edward CHENG, GBS, JP, Mr Lawrence LEE, BBS, JP, Ms Pauline LEUNG, Mr David NORMAN, Mr Nicholas NORRIS, Mr Martin SABINE, Mr Philip TYE, Mr Richard WINTER, Mr Julian WOLHARDT, Mr Richard WONG and Mr Alex WONG

Disciplinary Chair Committee

Mr JAT Sew Tong, SC, JP, Mr Douglas LAM, SC, Mr Paul SHIEH, SC, and Mr Anson WONG, SC

Nominations Committee

Mr Tim LUI, SBS, JP and Mr Victor DAWES, SC

Full list of members of takeovers-related committees

Members are appointed for a term of two years until 31 March 2024 unless otherwise stated. The membership lists for the Panel, the Appeal Committee, the Disciplinary Chair Committee and the Nominations Committee are set out below.

Panel

The Panel hears disciplinary matters in the first instance, reviews rulings by the Executive at the request of any party dissatisfied with such a ruling and considers novel, important or difficult cases referred to it by the Executive. It also reviews, upon request by the SFC, the provisions of the Codes and the Rules of Procedure for hearings under the Codes and recommends appropriate amendments to the Codes and Rules to the SFC.

Chairman

Mr CHAN Yuk Sing, Freeman*

Deputy Chairmen

Mr CLARK Stephen Edward*
Ms KO Teresa Yuk Yin, JP
Ms LAM Chor Lai, Celia
Mr MAGUIRE John Martin
Mr SCHWILLE Mark Andrew
Mr WEBB David Michael*
Ms YU Ka Po, Benita

Members

Ms BIDLAKE Alexandra*
Ms BROWN Melissa*
Mr CHAN Che Chung
Ms CHARLTON Julia Frances
Mr CHENG Wai Sun, Edward, GBS, JP#
Mr CLARK Stephen John*
Mr IP Koon Wing, Ernest*
Mr LEE Kam Hung, Lawrence, BBS, JP
Ms LEUNG Po Wah, Pauline
Mr LIU Yun Bonn*
Mr NORMAN David Michael
Mr NORRIS Nicholas Andrew
Ms PARK Yoo-kyung*
Mr SABINE Martin Nevil
Mr SHAH Asit Sudhir*
Mr TYE Philip Andrew
Ms VAS Chau Lai Kun Judy*
Mr WINTER Richard David
Mr WOLHARDT Julian Juul
Mr WONG Richard
Mr WONG Wai Ming*
Mr WONG Yu Tsang, Alex
Mr WOO Ka Biu, Jackson*
Mr YUEN Ka Fai*

Appeal Committee

The Appeal Committee reviews disciplinary rulings of the Panel for the sole purpose of determining whether any sanction imposed by the Panel is unfair or excessive. It comprises a Chairman who is a member of the Disciplinary Chair Committee and other members of the Panel who are selected on a case-by-case basis.

* Appointed/Reappointed on 1 April 2021 for a two-year term until 31 March 2023.

Reappointed on 1 April 2022 for a term until 31 December 2022.

Disciplinary Chair Committee

Members are nominated by the Nominations Committee on the basis that they are duly experienced senior counsels. Their role is to act as Chairman of the Panel in disciplinary proceedings under the Codes or of the Appeal Committee on a case-by-case basis.

Members

Mr JAT Sew Tong, SC, JP
Mr LAM Douglas Tak Yip, SC
Mr SHIEH Wing Tai Paul, SC
Mr WONG Man Kit, Anson, SC

Nominations Committee

The Nominations Committee nominates members of the Panel, Appeal Committee and Disciplinary Chair Committee.

Ex officio Members

Mr ALDER Ashley Ian, SBS, JP (Chairman)
Mr CHAN Yuk Sing, Freeman
Ms TANG Siau Feng, Megan

Members

Mr LUI Tim Leung Tim, SBS, JP
Mr DAWES Victor, SC

Alternate members to Mr Chan Yuk Sing, Freeman

Mr CLARK Stephen Edward
Ms KO Teresa Yuk Yin, JP
Ms LAM Chor Lai, Celia
Mr MAGUIRE John Martin
Mr SCHWILLE Mark Andrew
Mr WEBB David Michael
Ms YU Ka Po, Benita

A full list of members of the Panel, Appeal Committee, Disciplinary Chair Committee and Nominations Committee can be found in the "Regulatory functions – Corporates – Takeovers and Mergers – Takeovers Panel and related committees" section of the SFC website.

Quarterly update on the activities of the Takeovers Team

In the three months ended 31 December 2021, we received 19 takeovers-related cases (including privatisations, voluntary and mandatory general offers and off-market and general-offer share buy-backs), nine whitewashes and 89 ruling applications.

Useful links

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

All issues of the *Takeovers Bulletin* are available under 'Published resources – Newsletters – Takeovers Bulletin' on the SFC website at www.sfc.hk.

Feedback and comments are welcome and can be sent to takeoversbulletin@sfc.hk.

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