

## **Takeovers Executive of the SFC publicly criticises Kwok Tse Wah in relation to breaches of the dealing restriction and dealing disclosure obligations under Rules 21.2 and 22 of the Takeovers Code**

### **Disciplinary action against Kwok Tse Wah**

1. The Executive publicly criticises:

Kwok Tse Wah (“**Mr Kwok**”) for breaching Rules 21.2 and 22 of the Code on Takeovers and Mergers (“**Takeovers Code**”) as a result of his failure to: (i) seek the Executive’s consent prior to selling shares in Hopewell Holdings Limited during an offer period; and (ii) disclose his dealings in the shares of Hopewell Holdings Limited.

Mr Kwok accepts that he breached the Takeovers Code and agrees to the disciplinary action taken against him under section 12.3 of the Introduction to the Takeovers Code.

### **Background and relevant provisions of the Takeovers Code**

2. Hopewell Holdings Limited (the “**Company**”)(stock code: 54) has been listed on the Main Board of the Stock Exchange of Hong Kong Limited since 1972. It is engaged in property investment, power, hotel and hospitality and other businesses.
3. On 4 December 2018, an offer period commenced for the Company when the privatisation of the Company was first announced. On 5 December 2018, Petrus HK Co Limited (the “**Offeror**”) and the Company issued a joint announcement announcing details of the privatisation proposal by way of a scheme of arrangement (the “**Joint Announcement**”).
4. The Offeror was formed for the purpose of the privatisation proposal and it is wholly-owned by Latour HK Co Ltd (“**Latour HK**”). Each of Sir Gordon Wu and Lady Ivy Wu has an indirect 50% interest in Latour HK<sup>1</sup> and both are directors of Latour HK and the Offeror.
5. Under the privatisation proposal, each scheme shareholder would receive \$38.80 in cash for each scheme share. The scheme document on the proposed privatisation was despatched to shareholders on 25 February 2019.

#### ***Relevant provisions under the Takeovers Code***

6. *Rule 21.2 Restrictions on dealings during the offer*

Rule 21.2 requires that “[d]uring an offer period, the offeror and persons acting in concert with the offeror must not sell any securities in the offeree company except with the prior consent of the Executive and following 24

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<sup>1</sup> The shareholding structure of Latour HK will change prior to the privatisation proposal becoming effective such that Sir Gordon Wu and Lady Ivy Wu will continue to be interested in 76.15% of Latour HK with the remaining 23.85% held by others including Sir Gordon Wu’s and Lady Ivy Wu’s family members.

*hours public notice that such sales might be made.... Sales below the value of the offer will not be permitted...”*

7. *Rule 22 Disclosure of dealings during offer period*

During an offer period, Rule 22 of the Takeovers Code requires an offeror and its associates to disclose their dealings in the relevant securities (as defined in Note 4 to Rule 22) of an offeree company conducted for themselves or on behalf of discretionary clients.

***Measures taken by the Offeror regarding dealing restrictions under the Takeovers Code***

8. On 5 December 2018, around the time of the publication of the Joint Announcement, Sir Gordon Wu verbally informed Mr Kwok that: (i) the Offeror made a proposal to privatise the Company; and (ii) by reason of Mr Kwok being Lady Ivy Wu’s father, he could not buy or sell shares in the Company and could not vote at the court meeting.
9. On 7 December 2018, the Offeror sent each of its concert party: (i) a reminder of the dealing disclosure obligations under Rule 22 of the Takeovers Code; and (ii) a do’s and don’ts letter summarising a concert party’s obligations under the Takeovers Code which included a restriction on dealing. Mr Kwok signed an acknowledgment confirming receipt of the reminder and the letter on the same day.

**Breaches of the Takeovers Code**

10. On 6 December 2018, which was two days after the commencement of the offer period, Mr Kwok sold 40,000 shares in the Company on-market, representing approximately 0.005% of the total issued shares in the Company<sup>2</sup> (the “Dealings”).
11. As at the date of the Joint Announcement, Mr Kwok held 951,600 shares of the Company representing 0.11% of the Company. Following the Dealings, Mr Kwok’s interest in the Company was reduced to 911,600 shares representing 0.10% of the Company.
12. On 14 February 2019, the Offeror became aware of the Dealings and informed the Executive. On 18 February 2019, a disclosure of interest form on the Dealings was filed with the Executive.

***Mr Kwok breached Rules 21.2 and 22 of the Takeovers Code***

13. Mr Kwok, as the father of Lady Ivy Wu, is a party acting in concert with the Offeror. Accordingly, he is subject to the dealing restrictions under Rule 21.2 and the dealing disclosure obligations under Rule 22 of the Takeovers Code.

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<sup>2</sup> 20,000 Hopewell shares were sold at HK\$34.00 per share and 20,000 Hopewell shares were sold at HK\$34.20 per share.

14. Mr Kwok's disposal of the Company's shares and his subsequent failure to disclose the Dealings by 12.00 noon on the following business day constituted breaches of Rules 21.2 and 22 of the Takeovers Code.

#### **Executive's comments**

15. The dealing restrictions imposed on an offeror and its concert parties under Rule 21 is designed to protect shareholders and ensure a fair and informed market.
16. Similarly, the disclosure obligations under Rule 22 of the Takeovers Code are designed to reflect the fact that a high degree of transparency in dealings in an offeree company's shares during the critical period of an offer is essential to the efficient functioning of the market.
17. In reaching its decision to impose sanctions against Mr Kwok, the Executive paid particular regard to the standards of behaviour and integrity that might reasonably be expected of concert parties of an offeror. The Executive expects concert parties of an offeror to use the best of their abilities to comply with the Takeovers Code, which may involve seeking professional advice as and when needed.
18. The Executive notes that Mr Kwok was reminded of the dealing restrictions under the Takeovers Code prior to the Dealings. The Offeror's legal adviser also sent him a reminder of the requirements of the Takeovers Code following publication of the Joint Announcement. Mr Kwok should have been aware of the requirements of the Takeovers Code and his own actions led to the breaches of the Takeovers Code.
19. While the Executive recognises Mr Kwok's cooperation in relation to its review of this matter, the Executive considers the breaches in this case to be serious and merit the present disciplinary action. Mr Kwok has accepted the disciplinary action taken against him under section 12.3 of the Introduction to the Takeovers Code.
20. The Executive wishes to take 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 takeovers and mergers-related matters in accordance with the Takeovers Code. If there is any doubt about the application of the Takeovers Code, the Executive should be consulted at the earliest opportunity.

10 April 2019