

Takeovers Executive of the SFC sanctions Mr Chu Hing Tsung for breaching Rule 26.1 of the Takeovers Code

Sanctions

1. The SFC today publicly censures and imposes a 12-month cold-shoulder order against Mr Chu Hing Tsung (also known as Zhu Qing Yi) (“**Mr HT Chu**”) for breaching the mandatory general offer obligation under Rule 26.1 of the Code on Takeovers and Mergers (“**Takeovers Code**”). Mr HT Chu will be denied direct or indirect access to the Hong Kong securities market for a period of 12 months commencing on 25 January 2022 and ending on 24 January 2023.

Background and key facts

2. Zhuguang Holdings Group Company Limited (“**Company**”) has been listed on the Main Board of The Stock Exchange of Hong Kong Limited since 1996. In 2009, Rong De Investments Limited (“**Rong De**”) made a mandatory general offer for the Company after it acquired a 57.39% interest in the Company (“**2009 MGO**”). At that time, Mr Liao Tengjia (“**Mr Liao**”) owned 60% of Rong De and Mr Chu Muk Chi (“**Mr MC Chu**”) owned 40%. Following the close of the mandatory general offer, Rong De had a 57.41% interest in the Company.
3. Mr Liao, Mr MC Chu and Mr HT Chu were appointed as executive directors of the Company in 2009. Mr HT Chu is a younger brother of Mr MC Chu.
4. In July 2021, the shareholders of Rong De intended to undertake transfers of shares in Rong De (“**Proposed Transfer**”) and Rong De applied to the Executive for a ruling that the Proposed Transfer would not trigger a mandatory general offer under Rule 26.1 of the Takeovers Code. At the time of Rong De’s application, Rong De was interested in 66.85% of the Company, and in turn, Rong De was 36.00% owned by Mr Liao, 29.94% owned by Mr MC Chu and 34.06% owned by Mr HT Chu.
5. While processing the ruling application for the Proposed Transfer, the Executive noticed a difference in the shareholding in Rong De compared to the 2009 MGO and looked into the matter. The Executive found that on 16 January 2012, the Company announced a discloseable and connected transaction where Mr HT Chu sold: (i) the entire issued share capital in Profait International Investments Limited (“**Profait International**”); and (ii) a loan owed by Profait International and its subsidiaries to him, to a wholly-owned subsidiary of the Company for a consideration of RMB354.5 million (“**2012 Discloseable Transaction**”). The consideration would be satisfied by way of issuance to Mr HT Chu (or a person nominated by him) of 437,453,000 new shares in the Company (“**Shares**”) at the issue price of HK\$1.00 per Share (“**Consideration Shares**”).
6. The Consideration Shares represented 17.72% of the Company’s then existing share capital and 15.05% of the issued share capital as enlarged by the issue of the Consideration Shares.
7. After shareholder’s approval was obtained, the 2012 Discloseable Transaction completed on 7 May 2012. The Company’s completion announcement dated 7 May 2012 mentioned that the Consideration Shares were issued to a company nominated by Mr HT Chu but did not disclose the identity of the nominee company.

However, each of Rong De and Mr HT Chu filed disclosure of interests forms for the 2012 Discloseable Transaction pursuant to Part XV of the Securities and Futures Ordinance on 10 May 2012.

8. The Executive's enquiries in relation to the Proposed Transfer revealed that Mr HT Chu had nominated Rong De to take up the Consideration Shares. Rong De's interest in the Company increased from 52.76% to 59.87% following the issue of the Consideration Shares. In return, Rong De issued to Mr HT Chu 50,280 new shares in Rong De, representing 25.14% of the enlarged issued share capital of Rong De. That number was determined by reference to the proportion of the number of Consideration Shares to the total number of Shares held by Rong De immediately after the issue of the Consideration Shares. Following completion of the 2012 Discloseable Transaction, Rong De was held 44.92% by Mr Liao, 29.94% by Mr MC Chu and 25.14% by Mr HT Chu.
9. It further transpired that on 15 June 2012, Mr Liao transferred 17,840 shares in Rong De (representing 8.92% in Rong De) to Mr HT Chu for a total consideration of RMB75 million as Mr Liao wished to realise part of his investment ("**2012 Transfer**"). Upon completion of the 2012 Transfer, Mr HT Chu became interested in a total of 34.06% of Rong De. Thereafter the shareholding in Rong De remained the same to July 2021 with Mr Liao holding 36.00%, Mr MC Chu 29.94% and Mr HT Chu 34.06%.
10. Following completion of the 2012 Discloseable Transaction, Mr HT Chu and Mr MC Chu obtained statutory control of Rong De by holding more than 50% of the voting rights in Rong De. Given Rong De held 59.87% interest in the Company at the material time, Mr HT Chu's acquisition of shares in Rong De as a result of the 2012 Discloseable Transaction triggered a mandatory general offer for the Shares under the chain principle pursuant to Note 8 to Rule 26.1 of the Takeovers Code. However, no general offer was made at that time.
11. Mr HT Chu accepted that he had breached Rule 26.1 of the Takeovers Code and deprived the Company's shareholders of the right to receive a general offer for their shares. Mr HT Chu sincerely apologised for the breach and explained that he was unaware at the time that a mandatory offer obligation had arisen as a result of the 2012 Discloseable Transaction.

Relevant provision of the Takeovers Code

12. Note 8 to Rule 26.1 of the Takeovers Code provides that:

"Occasionally, a person or group of persons acting in concert acquiring statutory control of a company (which need not be a company to which the Takeovers Code applies) will thereby acquire or consolidate control, as defined in the Codes, of a second company because the first company itself holds, either directly or indirectly through intermediate companies, a controlling interest in the second company, or holds voting rights which, when aggregated with those already held by the person or group, secure or consolidate control of the second company. The Executive will not normally require an offer to be made under this Rule 26 in these circumstances unless either:-

- (a) the holding in the second company is significant in relation to the first company. In assessing this, the Executive will take into account a number of factors including, as appropriate, the assets and profits of the respective*

companies. Relative values of 60% or more will normally be regarded as significant; or

- (b) one of the main purposes of acquiring control of the first company was to secure control of the second company.*

The Executive should be consulted in all cases which may come within the scope of this Note to establish whether, in the circumstances, any obligation arises under this Rule 26.

“Statutory control” in this Note means the degree of control which a company has over a subsidiary.”

13. Note 8 to Rule 26.1, which is commonly referred to in the Takeovers Code as the “chain principle”, remains unchanged since 2012.
14. Acting in concert is defined in the Code as follows: *“Acting in concert: Persons acting in concert comprise persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate to obtain or consolidate “control” (as defined below) of a company through the acquisition by any of them of voting rights of the company.”*
15. Following completion of the 2012 Discloseable Transaction, Mr HT Chu and Mr MC Chu held in aggregate more than 50% of Rong De and therefore obtained statutory control of it (the first company). Mr HT Chu’s position was further consolidated following completion of the 2012 Transfer. Since Rong De is an investment holding company, its holding of 59.87% interest in the Company (the second company) at the time of the completion of the 2012 Discloseable Transaction is significant in relation to it (Rong De). It is clear that a chain principle offer had been triggered by Mr HT Chu as a result of his acquisition of shares in Rong De in the 2012 Discloseable Transaction.

Sanctions against Mr HT Chu

16. The Executive has carefully considered the evidence in this case, including submissions from Mr HT Chu. The breach took place nine years ago and was inadvertent. While the relevant parties had sought legal advice in respect of the 2012 Disclosable Transaction and took steps to ensure compliance with regulatory requirements, it was unfortunate that they were not advised of the Takeovers Code implications for the 2012 Discloseable Transaction. The Executive also notes that the 2012 Discloseable Transaction was approved by all of the independent shareholders that had voted at the relevant special general meeting in 2012.
17. Rule 26.1 is one of the most fundamental provisions in the Takeovers Code. The Executive expects persons who are actively engaged in the securities market to comply with the Takeovers Code which includes identifying potential Takeovers Code issues and seeking professional advice as and when needed. This is particularly the case in respect of a listed company director who must use the best of his or her abilities to comply with the Takeovers Code. 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 Takeovers Code.

18. Notwithstanding the above circumstances, the Executive notes that the Company's shareholders were deprived of the right to receive a general offer and Mr HT Chu's conduct merits disciplinary action. Mr HT Chu has accepted the disciplinary action taken against him under section 12.3 of the Introduction to the Takeovers Code.
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 on Takeover and Mergers and Share Buy-backs. Otherwise, they may find, by way of sanction, that the facilities of such markets are withheld from them in order to protect those who participate in Hong Kong's securities markets.

25 January 2022

SECURITIES AND FUTURES COMMISSION

Order pursuant to section 12 of the Introduction to the Hong Kong Codes on Takeovers and Mergers and Share Buy-backs

Mr Chu Hing Tsung

The Executive (as defined in the Hong Kong Codes on Takeovers and Mergers and Share Buy-backs) hereby REQUIRES that all licensed corporations, licensed representatives, registered institutions within the meaning of the Securities and Futures Ordinance (Cap. 571) and relevant individuals within the meaning of section 20(10) of the Banking Ordinance (Cap. 155) shall not, without the prior written consent of the Executive:

- act or continue to act directly or indirectly in their capacity as licensed corporations, licensed representatives and registered institutions or relevant individuals for Mr Chu Hing Tsung (also known as Zhu Qing Yi) or any corporation controlled by him (as defined in the Hong Kong Codes on Takeovers and Mergers and Share Buy-backs) other than Zhuguang Holdings Group Company Limited and its subsidiaries (within the meaning of the Hong Kong Codes on Takeovers and Mergers and Share Buy-backs); or
- knowingly assist directly or indirectly in a breach of this Order;

during the period commencing on 25 January 2022 and ending on 24 January 2023.

BY ORDER



CHENG Chi Ho Roger
The Executive
25 January 2022