

Takeovers Executive of the SFC sanctions Ngai Lai Ha for breaching Rule 26.1 of the Takeovers Code

Sanctions

1. The SFC today publicly censures and imposes an 18-month cold-shoulder order against Ms Ngai Lai Ha (“**Ms Ngai**”) for breaching the mandatory general offer obligation under Rule 26.1 of the Code on Takeovers and Mergers (“**Takeovers Code**”). Ms Ngai will be denied direct or indirect access to the Hong Kong securities market for a period of 18 months commencing on 2 November 2020 and ending on 1 May 2022.

Background and key facts

2. International Housewares Retail Company Limited (the “**Company**”) has been listed on the Main Board of the Stock Exchange of Hong Kong Limited since 25 September 2013. Ms Ngai is one of the founders of the Company. She has been an executive director of the Company since its listing and the chairperson of the Company since 1 March 2017.
3. Ms Ngai, Mr Lau Pak Fai Peter (“**Mr Lau**”), the other founder and an executive director of the Company, and their controlled company, Hiluleka Limited (“**Hiluleka**”) (together, the “**Concert Group**”) have been “acting in concert” under the Takeovers Code since the incorporation of Hiluleka in 2006.
4. On 6 March 2019, the Concert Group’s shareholding in the Company reached 50.50% following Ms Ngai’s purchase of 170,000 shares of the Company (“**Shares**”) at \$2.01 per Share on the same date (the “**First Dealing**”). This represented an increase of more than 2% from the Concert Group’s lowest collective percentage interest in the Company in the preceding 12 months of 48.48%. Subsequent to the First Dealing, Ms Ngai made 12 additional dealings in the Shares during the period from March to May 2019, and each of these dealings increased the collective percentage interest of the Concert Group by more than 2% from the lowest collective percentage interest in the respective preceding 12 months prior to the corresponding dealing. No mandatory general offer was made as a result of the First Dealing nor any of the 12 additional dealings.
5. Ms Ngai accepted that she has breached Rule 26.1(d) of the Takeovers Code and deprived the Company’s shareholders of the right to receive a general offer for their shares. Ms Ngai submitted that she misunderstood the operation of the “2% creeper” provisions under Note 17 to Rule 26.1 of the Takeovers Code¹ (“**Note 17**”) which resulted in the breach. Ms Ngai sincerely apologised for the breach.

Relevant provision of the Takeovers Code

6. Rule 26.1 of the Takeovers Code provides that:

¹ Pursuant to Note 17 to Rule 26.1, the “2% creeper” provisions under Rule 26.1(c) and (d) continue to apply to any immediately preceding 12-month period if at any time during such 12-month period, a person or a concert group holds 50% or less of the voting rights in a company.

“Subject to the granting of a waiver by the Executive, when...

- (d) two or more persons are acting in concert, and they collectively hold not less than 30%, but not more than 50%, of the voting rights of a company, and any one or more of them acquires additional voting rights and such acquisition has the effect of increasing their collective holding of voting rights of the company by more than 2% from the lowest collective percentage holding of such persons in the 12 month period ending on and inclusive of the date of the relevant acquisition;*

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...”

Note 17 provides that:

“The 2% creeper – holdings between 48% and 50%

It should be noted also that the restriction in Rule 26.1(c) and (d) applies to any immediately preceding 12 month period if at any time during such period a person, or group of persons acting in concert, holds 50% or less of the voting rights. Thus, a person or group of persons with 49% of the voting rights of a company will be restricted from acquiring more than a further 2% of the offeree company’s voting rights (resulting in a total of 51%) for a period of 12 months thereafter.”

It follows that Ms Ngai not only triggered a mandatory general offer obligation in respect of the First Dealing, but also in each of the subsequent 12 dealings during the period from March to May 2019, and no general offer was made. She therefore breached Rule 26.1(d) of the Takeovers Code.

Sanctions against Ms Ngai

7. The Executive has carefully considered the evidence in this case including Ms Ngai’s explanation that the breach was caused by her genuine misunderstanding of Note 17, the pattern of her previous acquisitions of shares in the Company, her acceptance that she has breached Rule 26(1)(d) of the Takeovers Code and her apology.
8. 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 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.
9. Although the breach was caused by Ms Ngai’s misunderstanding of Note 17, her conduct merits disciplinary action. Ms Ngai has accepted the disciplinary action taken against her under section 12.3 of the Introduction to the Takeovers Code.
10. 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 Takeovers Code and the Code on Share Buy-backs. Otherwise, they may find, by way of sanction, that the facilities of such markets are withheld in order to protect those who participate in Hong Kong's securities markets.

2 November 2020

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**

Ms Ngai Lai Ha

The Executive Director of the Corporate Finance Division of the Securities and Futures Commission ("**Executive**") 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 consent of the Executive in writing:

- act or continue to act directly or indirectly in their capacity as licensed corporations, licensed representatives and registered institutions or relevant individuals for Ms Ngai Lai Ha or any corporation controlled by her (as defined in the Hong Kong Codes on Takeovers and Mergers and Share Buy-backs) other than International Housewares Retail 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 2 November 2020 and ending on 1 May 2022.

BY ORDER



Brian Ho

Executive Director

2 November 2020