

Takeovers Executive of the SFC publicly censures BIT Mining Limited (formerly known as 500.com Limited) for breaching Rule 25 of the Code on Takeovers and Mergers

Sanctions

1. The Securities and Futures Commission (**SFC**) today publicly censures BIT Mining Limited (formerly known as 500.com Limited) for breaching Rule 25 of the Code on Takeovers and Mergers (**Takeovers Code**).

Background and key facts

2. The shares of Loto Interactive Limited (stock code: 8198) (**Company**) are listed on GEM of The Stock Exchange of Hong Kong Limited. The Company is principally engaged in the provision of data analysis and storage services, distribution of mobile gaming and money lending business in Hong Kong.
3. The American depository shares of BIT Mining Limited (formerly known as 500.com Limited) (**Offeror**) are listed on the New York Stock Exchange under the ticker symbol "BTCM". The Offeror operates online sports lottery business in mainland China and is undergoing a transformation into a cryptocurrency mining enterprise.
4. Mr Man San Law (**Mr Law**), a director and shareholder of the Offeror held approximately 0.3% of the Company's issued share capital.

Good Luck Subscription

5. On 21 December 2020, the Offeror and Good Luck Information Technology Co., Ltd. (**Good Luck IT**), a company wholly-owned by Mr Law, entered into a share purchase agreement under which the Offeror agreed to issue to Good Luck IT 85,572,963 class A ordinary shares in the Offeror at an aggregate consideration of US\$23,019,127 (i.e., US\$0.269 per share) (**Good Luck Subscription**). Upon completion of the Good Luck Subscription on 23 February 2021, Mr Law's aggregate voting rights in the Offeror (held directly and via his controlled companies) increased from approximately 3.78% to 19.9%.

Loto Subscription

6. On 28 January 2021, the Company and the Offeror announced (**Rule 3.5 Announcement**) the Offeror's proposed subscription of 169,354,839 shares in the Company (**Loto Subscription**), and an offer period for the Company commenced on the same date. On 31 March 2021, the Loto Subscription completed and the shareholding of the Offeror and its concert parties in the Company increased from 33.82% to 54.26%, thereby triggering a mandatory general offer under Rule 26.1 of the Takeovers Code. On 28 May 2021, the Offeror made an unconditional mandatory cash offer for all issued shares of the Company at \$0.75 per share (**Mandatory General Offer**).

Class A Preference Share Issuance

7. On 5 April 2021, the Offeror and Good Luck Capital Limited (**Good Luck Capital**), a company wholly-owned by Mr Law, entered into a share subscription agreement under which the Offeror agreed to issue to Good Luck Capital 65,000 class A preference shares in the Offeror at an aggregate consideration of US\$65,000 (i.e., US\$1 per share) (**Class A Preference Share Issuance**). On the same date, Mr Law was appointed as an executive director of the Offeror. Upon completion of the Class A Preference Share Issuance on 7 April 2021, Mr Law's aggregate voting rights in the Offeror (held directly and via his controlled companies) increased from approximately 19.9% to 61.72%.
8. The class A preference shares carry no right to dividend and are not convertible into ordinary shares of the Offeror. However, they carry special voting rights subject to, among others, the following terms: (i) each class A preference share is entitled to 10,000 votes (subject to a proportional reduction commensurate with the number of class A ordinary shares beneficially owned by Good Luck Capital); and (ii) if Good Luck Capital ceases to be controlled by a person holding executive office of the Offeror, the class A preference shares shall cease to have any voting right.

Mr Law

9. At all material times during the Good Luck Subscription, Loto Subscription and the Class A Preference Share Issuance, Mr Law was a shareholder holding 184,000 shares of the Company.

Relevant provisions of the Takeovers Code

10. Rule 25 of the Takeovers Code provides that "*[e]xcept with the consent of the Executive, neither the offeror nor any person acting in concert with it may make any arrangements with shareholders or enter into arrangements to purchase or sell securities of the offeree company, or which involve acceptance of an offer, either during an offer or when an offer is reasonably in contemplation or for 6 months after the close of such offer if such arrangements have favourable conditions which are not to be extended to all shareholders.*"
11. Practice Note 17 makes it clear that special deals are generally not permitted unless the Executive provides the requisite consent. It also clarifies the Executive's current approach to special deals and when consent may be given.

The SFC's comments

12. A fundamental principle of the Takeovers Code is the equality of treatment of shareholders in the context of a takeover or merger transaction. This is set out in General Principle 1 which states that "*[a]ll shareholders are to be treated even-handedly and all shareholders of the same class are to be treated similarly.*"
13. To give effect to this General Principle, Rule 25 of the Takeovers Code generally prohibits transactions with favourable conditions between an offeror or its concert parties and a shareholder of the offeree company.

Special deal 1 – Good Luck Subscription

14. The share purchase agreement for the Good Luck Subscription was signed on 21 December 2020. The next day, on 22 December 2020, representatives of the Offeror and the Company discussed the Loto Subscription as part of the contemplated business transformation of the Offeror and of the Company's data centre business. Therefore, the Executive considers that the Good Luck Subscription was entered into when the Loto Subscription (and thus the Mandatory General Offer) was reasonably in contemplation. In any event, the Good Luck Subscription completed on 23 February 2021, which was after the commencement of the offer period on 28 January 2021. As Good Luck IT subscribed for class A ordinary shares in the Offeror, which was a transaction with favourable conditions not extended to other shareholders of the Company, the Good Luck Subscription was essentially a special deal under Rule 25 of the Takeovers Code.
15. Neither the Offeror nor its advisers consulted the Executive on the application of Rule 25 of the Takeovers Code to the Good Luck Subscription prior to the publication of the Rule 3.5 Announcement. In fact, the Rule 25 implications of the Good Luck Subscription were only realised sometime after its completion. Therefore, in completing the Good Luck Subscription, the Offeror had breached Rule 25 of the Takeovers Code as it was a special deal that was completed without the consent of the Executive.
16. While it is not necessary for the Executive to consider whether or not consent would have been granted for the Good Luck Subscription, but assuming that consent were to be granted, the Offeror would have been required to either:
 - (a) extend the benefit of the special deal to other shareholders of the Company; or
 - (b) if such benefit is not capable of being so extended, satisfy the following conditions for the Good Luck Subscription: (i) have an independent financial adviser publicly state that in its opinion the terms of the transaction were fair and reasonable; and (ii) obtain the approval of the Company's independent shareholders.
17. In either case, the Company's shareholders had been deprived of the opportunities mentioned in paragraph 16(a) or (b).

Special deal 2 – Class A Preference Share Issuance

18. Following the Good Luck Subscription and concurrent with the Mandatory General Offer, Mr Law (through Good Luck Capital) further increased his total voting rights in the Offeror through the Class A Preference Share Issuance. This was also an arrangement between the Offeror and a shareholder of the Company with favourable conditions not extended to all other shareholders, and it constituted a special deal under Rule 25 of the Takeovers Code.
19. The Class A Preference Share Issuance was not raised with the Executive until after it had been completed. Therefore, the Offeror had breached Rule 25 of the

Takeovers Code in completing the Class A Preference Share Issuance without the Executive's consent.

20. Again, although it is no longer necessary for the Executive to consider the issue of consent, even if consent were to be given, the Executive takes the view that the Class A Preference Share Issuance would not have been capable of being extended to all the other shareholders.
21. In forming this view, the Executive took into account that: (i) the Class A Preference Share Issuance was made in recognition of Mr Law's contribution to the Offeror, and the special voting rights (described in paragraph 8) were dependent on the number of class A ordinary shares controlled by him and his executive position in the Offeror; and (ii) the class A preference shares carry no right to dividend.
22. As such, assuming that the Executive were to give consent, the Class A Preference Share Issuance would have been subject to the conditions mentioned above in paragraph 16(b). However, independent shareholders' approval was not obtained in this case, depriving shareholders of the Company the opportunity to vote on the matter.

Chain principle offer

23. As a result of the Class A Preference Share Issuance, Mr Law acquired statutory control of the Offeror and thereby consolidated control of the Company. The Executive considers that a mandatory general offer for the Company was triggered upon completion of the Class A Preference Share Issuance under the "chain principle" set out in Note 8 to Rule 26.1 of the Takeovers Code. However, given that Mr Law's subscription price for the Class A Preference Share Issuance was only US\$65,000, the resultant chain principle offer price under the "PACPO formula" (under Practice Note 19) is likely to be substantially below the Mandatory General Offer price. Accordingly, the Executive is not inclined to require Mr Law to make a mandatory general offer under Note 8 to Rule 26.1 of the Takeovers Code.

The importance for advisers to ensure that parties understand and abide by the Codes

24. The completion of the Good Luck Subscription and the Class A Preference Share Issuance (together, **Special Deals**) only came to light in April 2021 during the Executive's vetting of the draft composite document relating to the Mandatory General Offer. By the time the parties realised the Takeovers Code implications, the Special Deals had been completed.
25. The Offeror (through its advisers) explained to the Executive that it did not obtain advice from its professional advisers in relation to the Takeovers Code implications of the Special Deals.
26. Section 1.7 of the Introduction to the Codes on Takeovers and Mergers and Share Buy-backs (**Codes**) makes it clear that the role and responsibility of financial and other professional advisers are of particular importance given the non-statutory nature of the Codes, and it is part of their responsibility to use all reasonable efforts, subject to any relevant requirements of professional conduct,

to ensure that their clients understand and abide by the requirements of the Codes.

27. In the current case, while the financial and legal advisers to the Offeror in relation to the Mandatory General Offer were not involved in the execution of the Special Deals, it is their responsibility to ensure that the Offeror understands that its conduct during the course of an offer is subject to the requirements of the Codes. In particular, they should have made clear to the Offeror that transactions undertaken in an overseas jurisdiction can also have implications under the Codes. The Executive also notes that the Special Deals were publicly announced by the Offeror at the relevant time.
28. The Executive expects persons who are actively engaged in the securities market in Hong Kong to comply with the Codes. This includes seeking professional advice as and when needed. In this case, the Offeror should have sought the advice of its financial and legal advisers in relation to the Special Deals at an early stage. Accordingly, the Offeror and its advisers should have consulted the Executive before embarking on a course of action which might have implications under the Codes. In this way, they could have clarified the basis on which they could properly proceed and therefore minimise the risk of taking any action which might breach the Codes.
29. Although it was unfortunate that the Offeror failed to consult its advisers on the Special Deals and their implications under the Codes, the Executive considers that its conduct merits disciplinary action. The Offeror has accepted that the completion of the Special Deals breached Rule 25 of the Takeovers Code and sincerely apologised for such breaches. It has consented to the disciplinary action taken against it under section 12.3 of the Introduction to the Codes.
30. The Executive hereby reminds 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. If there is any doubt about the application of the Codes, the Executive should be consulted at the earliest opportunity.

19 July 2021