

## Takeovers Executive of the SFC publicly criticises Gao Yunhong and Feng Xuelian for breaching the frustrating action rules under the Code on Takeovers and Mergers

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### Sanctions

1. The Executive publicly criticises Mr Gao Yunhong (“**Mr Gao**”) and Ms Feng Xuelian (“**Ms Feng**”) in connection with the disposal of material assets of Steering Holdings Limited (“**Company**”) during an offer period in breach of Rule 4 of the Code on Takeovers and Mergers (“**Takeovers Code**”).

### Background

2. On 26 April 2021, Masterveyor Holdings Limited (“**Offeror**”), a company wholly-owned by Mr Ng Kin Siu (“**Mr Ng**”), completed the acquisition of 652,680,000 shares in the Company (“**Sale Shares**”), representing a 49% shareholding interest in the Company. Mr Ng was an executive director of the Company at that time.
3. The Offeror acquired the Sale Shares from CMBC Capital Finance Limited (“**CMBC**”) upon the enforcement of a security over the Sale Shares by CMBC. The security over the Sale Shares was related to a loan extended by CMBC to Gentle Soar Limited (“**Gentle Soar**”). Gentle Soar was the controlling shareholder of the Company prior to the acquisition of the Sale Shares by the Offeror and was wholly-owned by Mr Gao who was then a non-executive director of the Company.
4. Prior to the acquisition, Mr Ng held a 4.62% interest in the Company. Following the completion of the acquisition, the aggregate shareholding interest of Mr Ng and parties acting in concert with him in the Company increased from 4.62% to 53.62%. As such, an obligation for the Offeror to make an unconditional mandatory offer for the Company was triggered pursuant to Rule 26.1 of the Takeovers Code.
5. On 3 May 2021, while the Executive was vetting the draft offer announcement to be issued by the Offeror, the Company announced that Mr Ng and all the independent non-executive directors had been removed from the board of the Company (“**Removals**”). Following the Removals, only Mr Gao and Ms Feng (an executive director of the Company) remained on the board.
6. On 4 May 2021, the Company announced that Mr Gao had informed its board of directors (consisting of Mr Gao and Ms Feng) that: (i) there was a dispute between Gentle Soar, CMBC and the Offeror in respect of the enforcement of the security over the Sale Shares by CMBC and the transfer of the Sale Shares to the Offeror; and (ii) legal proceedings had been instigated by Gentle Soar against CMBC, the Offeror and Mr Ng in relation to the dispute (“**Dispute**”).
7. On 6 May 2021, the Company announced that a new executive director and three new independent non-executive directors had been appointed to its board of directors (“**New Appointments**”). Following the New Appointments, the board of the Company consisted of Mr Gao, Ms Feng and the new directors (“**New Board**”).
8. On 7 May 2021, the New Board held a meeting and approved the proposed disposal (“**Disposal**”) of 137,740,000 shares in CMBC Capital Holdings Limited (“**CMBCCH Shares**”). The CMBCCH Shares were held by Jet Speed Asia Pacific

Limited (“**Jet Speed**”), a wholly-owned subsidiary of the Company. Ms Feng was the sole director of Jet Speed.

9. On 13 May 2021, the Offeror announced its firm intention to make an offer for the shares of the Company (“**Offer Announcement**”) in compliance with Rule 3.5 of the Takeovers Code and an offer period in respect of the Company commenced on the same day.
10. On 14 May 2021, the Offeror’s legal advisers wrote to the legal advisers of Gentle Soar, Mr Gao and Ms Feng to, among other things, remind them that any disposal of the Company’s assets (including the Disposal) may result in a breach of the frustrating action requirements under Rule 4 of the Takeovers Code.
11. On 17 May 2021, Gentle Soar’s legal advisers wrote to consult the Executive on whether a general offer obligation was in fact triggered by the Offeror in light of the Dispute. On the same day, the Executive informed the legal advisers that regardless of the Dispute, since the transfer of the Sale Shares to the Offeror had completed, an obligation to make a general offer had been triggered on the part of the Offeror for the purpose of the Takeovers Code.
12. On 21 May 2021, the Company published an announcement in response to the Offer Announcement (“**Response Announcement**”) in compliance with Rule 3.2 of the Takeovers Code. The Response Announcement was issued under the authority of the New Board.
13. On 1 June 2021, the Company published an announcement stating that the Disposal had taken place between 27 May 2021 and 1 June 2021 (“**Discloseable Transaction Announcement**”). The Disposal constituted a discloseable transaction under the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (“**Listing Rules**”). The Discloseable Transaction Announcement was issued under the authority of the New Board.
14. The Disposal was carried out by Ms Feng who gave instructions to the relevant broker for the on-market sale of the CMBCCH Shares. She informed Mr Gao of the execution of the Disposal.
15. On 15 June 2021, the Company published an announcement stating that the New Board had resolved on 1 June 2021 that, among other things, the previous resolutions approving the Removals and the New Appointments were suspended as if they had not been effected. As a result, Mr Ng and the three original independent non-executive directors of the Company were reinstated to the board of the Company.

### **Relevant provisions of the Takeovers Code**

16. Rule 4 of the Takeovers Code states that “[o]nce a bona fide offer has been communicated to the board of an offeree company or the board of an offeree company has reason to believe that a bona fide offer may be imminent, no action which could effectively result in an offer being frustrated, or in the shareholders of the offeree company being denied an opportunity to decide on the merits of an offer, shall be taken by the board of the offeree company in relation to the affairs of the company without the approval of the shareholders of the offeree company in general meeting. In particular the offeree company’s board must not, without such approval, do or agree to...(c) sell, dispose of or acquire assets of a material amount ...”.

17. Note 1 to Rule 4 provides that “[t]he requirement of a shareholders’ meeting may be waived by the Executive if the offeror ... agrees”.

18. Note 6 to Rule 4 further provides that “[f]or the purpose of determining whether a disposal or acquisition is of a “material amount” the Executive will, in general, apply the same tests as those set out in the Listing Rules to determine whether a transaction is a “discloseable transaction”.

*If several Transaction(s) relevant to this Rule 4, but not individually material, occur or are intended, the Executive will aggregate such Transaction(s) to determine whether the requirements of this Rule 4 are applicable to any of them.*

*The Executive should be consulted in advance where there may be any doubt as to the application of the above.”*

### **Frustrating action**

19. Given that the Disposal was a discloseable transaction under the Listing Rules carried out during an offer period, it constituted a frustrating action which was subject to the requirements under Rule 4 of the Takeovers Code. However, the approval of the Company’s shareholders was not obtained nor was a waiver of the requirement to obtain shareholders’ approval sought from the Executive. Therefore, there was a clear breach of the requirements under Rule 4 of the Takeovers Code.

### **The SFC’s comments**

20. Under the Hong Kong takeovers regime, Rule 4 of the Takeovers Code is a fundamental rule which prevents an offeree company from taking any action which could result in an offer being frustrated or its shareholders being denied an opportunity to decide on the merits of an offer from the time when a bona fide offer has been communicated to the board of the offeree company or the board of the offeree company has reason to believe that a bona fide offer may be imminent (irrespective of whether that offer is welcomed by the offeree company). Rule 4 also serves to provide a level playing field for parties in an offer.

21. Given that the Offer Announcement was published and an offer period had commenced in respect of the Company, the Disposal was clearly subject to the requirements of Rule 4. As such, the Executive considers that the non-compliance with Rule 4 in this case to be a disregard of a fundamental principle of the Takeovers Code which merits disciplinary action.

22. The Executive also noted the changes to the constitution of the board of the Company (ie, the Removals and the New Appointments) during the period in which the Disposal took place and that both Mr Gao and Ms Feng remained as the directors of the Company throughout the relevant period. Ms Feng was also the sole director of Jet Speed at the relevant time. Given that they owed duties to the Company and they were substantially involved in the Disposal, the Executive has decided to take the current disciplinary action against each of Mr Gao and Ms Feng.

23. Both Mr Gao and Ms Feng accepted that they breached the requirements under Rule 4 of the Takeovers Code and agreed to the current disciplinary action against them under section 12.3 of the Introduction to the Codes on Takeover and Mergers and Share Buy-backs (“**Codes**”). They admitted that the breaches arose as a result of their oversight and misunderstanding of the Takeovers Code requirements. They apologised for the breaches.

24. The Executive reminds market practitioners and all those involved in takeovers and mergers in Hong Kong the importance of ensuring compliance with all requirements imposed by the Codes, regardless of the position the parties are finding themselves in. In particular, they should conduct themselves in matters relating to takeovers, mergers and share buy-backs in accordance with the Codes and seek 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.

7 April 2022