

Takeovers Executive of the SFC publicly criticises Gold Dragon Worldwide Asset Management Limited for breaches of the dealing disclosure requirements under Rule 22 of the Takeovers Code

Disciplinary action against Gold Dragon Worldwide Asset Management Limited

1. The Executive publicly criticises Gold Dragon Worldwide Asset Management Limited (**Gold Dragon**) for breaching Rule 22 of the Code on Takeovers and Mergers (**Takeovers Code**) as a result of its failure to disclose its dealings in the shares of Shanghai Dongzheng Automotive Finance Co., Limited (**Shanghai Dongzheng**) between 12 March 2021 and 14 April 2022. Gold Dragon accepts that it breached the Takeovers Code and agreed to the disciplinary action taken against it under section 12.3 of the Introduction to the Takeovers Code.

Background and relevant provisions of the Takeovers Code

Background

2. Gold Dragon, a wholly-owned subsidiary of Gold Dragon (Cayman) Holdings Limited, conducts asset management and securities consulting businesses, including acting as the investment manager of Seahawk China Dynamic Fund (**Seahawk Fund**). At the relevant time, Seahawk Fund held more than 5% of Shanghai Dongzheng's issued H shares.
3. On 3 February 2021, an offer period commenced for Shanghai Dongzheng when it announced a possible sale of the 71.04% of the total issued share capital held by its controlling shareholder to a potential buyer (**Rule 3.7 Announcement**). The Rule 3.7 Announcement contained a clear reminder to Shanghai Dongzheng's "associates" (as defined in the Takeovers Code and includes any person who owns or controls 5% or more of any class of relevant securities of Shanghai Dongzheng) that they should disclose their dealings in Shanghai Dongzheng's relevant securities in accordance with Rule 22 of the Takeovers Code.

Rule 22

4. Rule 22.1(a) of the Takeovers Code provides that "*[d]ealings in relevant securities by an offeror or the offeree company, and by any associates of either of them, for their own account during an offer period must be publicly disclosed in accordance with Notes 5, 6 and 7 to this Rule 22.*"
5. The Takeovers Code defines an "associate" to include a person who owns or controls 5% or more of any class of relevant securities issued by an offeror or the offeree company, including a person who as a result of any transaction owns or controls 5% or more.
6. Immediately prior to the commencement of the offer period, Seahawk Fund owned or controlled 6.45% of the total number of H shares of Shanghai Dongzheng. As the investment manager of Seahawk Fund, Gold Dragon owned or controlled more than 5% of Shanghai Dongzheng's issued H shares at the relevant time. As a result, Gold Dragon was Shanghai Dongzheng's associate and was required under Rule 22 of the Takeovers Code to publicly disclose its dealings in Shanghai Dongzheng's relevant securities during the offer period.

Breaches of Rule 22 of the Takeovers Code

7. Between 12 March 2021 and 14 April 2022, Gold Dragon, acting as the investment manager of Seahawk Fund, executed a total of 53 trades in Shanghai Dongzheng's H shares (**Relevant Dealings**), decreasing Seahawk Fund's holding in the H shares of Shanghai Dongzheng from 6.45% to 4.75%. Gold Dragon and Seahawk Fund made relevant disclosures under Part XV of the Securities and Futures Ordinance (**SFO**). However, both failed to file disclosures in respect of the Relevant Dealings in accordance with Rule 22 of the Takeovers Code.
8. The Executive became aware of the Relevant Dealings as a result of Seahawk Fund's disclosures under Part XV of the SFO.
9. Gold Dragon explained that since November 2021, its resources began to stretch thin as it commenced an investigation and subsequently civil proceedings against its former executive director, chief investment officer and chief executive officer, who was also a director of Seahawk Fund, in respect of his wrongdoings. Its failure to make the necessary filings in compliance with Rule 22 of the Takeovers Code was primarily due to a lack of manpower and tremendous time being spent on dealing with securities brokers' enquiries including margin calls, forced sales and terminations of engagements as a result of the suspension of duties of Gold Dragon's investment team.
10. Upon discovering the oversight, Gold Dragon took immediate steps to submit relevant public disclosures as required under Rule 22.

Apology by Gold Dragon and remedial action taken

11. Gold Dragon sincerely apologised for overlooking the dealing disclosure requirements under the Takeovers Code. It has implemented a number of enhancements and remedial measures to ensure future compliance with the Takeovers Code and prevent similar incidents, including:
 - (a) Gold Dragon has assigned staff to review regularly:
 - (i) all the stock positions of all securities under its existing portfolio and check whether any of the stock positions would render Gold Dragon an associate of any company listed on The Stock Exchange of Hong Kong Limited (SEHK);
 - (ii) the announcements published on the SEHK's website for all securities under the portfolio managed by Gold Dragon to see whether an announcement has been issued by, or in relation to, a relevant company that has commenced an offer period; and
 - (iii) the offer period tables published on the website of the Securities and Futures Commission (SFC).
 - (b) Gold Dragon's compliance officer (the Manager-in-Charge), together with other competent staff, reviewed:
 - (i) all existing positions in its fund portfolio and confirmed that at the time of the review it did not hold shares in any SEHK-listed companies which in aggregate exceeded 5% of their total issued share capital; and

- (ii) all internal compliance and procedural manuals and confirmed that they are adequate in view of Gold Dragon's asset management business and in line with industry standards.

Gold Dragon will regularly review the above procedures as long as it continues with its asset management business.

- (c) Gold Dragon has subscribed to relevant alerts from the SFC (including the Takeovers Bulletin).

The Executive's comments

12. The disclosure obligations in Rule 22 of the Takeovers Code are intentionally onerous to reflect the fact that a high degree of transparency is essential to the efficient functioning of the market in an offeree company's shares (and an offeror company's shares in the case of a securities exchange offer) during the critical period of an offer or possible offer. Timely and accurate disclosure of information in relation to dealings by associates plays a fundamental role in ensuring that takeovers are conducted within an orderly framework and that the integrity of the market is maintained. This is in line with General Principle 6 of the Takeovers Code which provides that:

"All persons concerned with offers should make full and prompt disclosure of all relevant information and take every precaution to avoid the creation or continuance of a false market. Parties involved in offers must take care that statements are not made which may mislead shareholders or the market."

13. Whilst the Executive recognises Gold Dragon's cooperation in its review of this matter, the Executive considers the breaches merit the present disciplinary action given the material deficiencies in Gold Dragon's compliance systems and that, as a fund manager, adequate systems should have been put in place to prevent the breaches. The fact remains that during the relevant period, Gold Dragon failed to report the Relevant Dealings in breach of Rule 22 and General Principle 6.
14. The Executive wishes to take this opportunity to remind practitioners and parties who wish to take advantage of the securities market in Hong Kong that they should conduct themselves in matters relating to takeovers and mergers in accordance with the Takeovers Code. In particular, associates with a 5% or more interest in an offeree company or offeror company must report their dealings in the relevant securities of the offeree company (and of the offeror company in the case of a securities exchange offer) during an offer period in accordance with Rule 22 of the Takeovers Code. In case of doubt as to the application of Rule 22, the Executive should be consulted.

28 October 2022