



Takeovers Bulletin

Highlights

- Takeovers Panel's decision concerning Maanshan Iron & Steel Company Limited
- Reminder about offerors' restrictions under Rule 26.4
- Revisions to Practice Note 19 – Chain principle offer price
- Public criticism of CM Asset Management (Hongkong) Company Limited for breaching dealing disclosure requirements
- Quarterly update on the activities of the Takeovers Team

Takeovers Panel's decision concerning Maanshan Iron & Steel Company Limited

The Takeovers Panel has ruled that a waiver of the general offer obligation will not be granted to China Baowu Steel Group Corporation Limited if it proceeds with the proposed acquisition of a 51% interest in Magang (Group) Holding Company Limited from the State-owned Assets Supervision and Administration Commission of the People's Government of Anhui Province (Anhui SASAC) at nil consideration. Upon completion of the proposed acquisition, China Baowu would acquire control over a 45.54% interest in Maanshan Iron & Steel Company Limited.

The Executive received an application for a waiver of China Baowu's obligation to make a mandatory general offer for Maanshan Iron upon completion of the proposed acquisition under Note 6(a) to Rule

26.1. As there were particularly novel, important or difficult points at issue, the Executive referred the matter to the Panel which met on 19 June 2019 to consider it.

The Panel considered, among other things, that nothing has been provided by the parties to demonstrate that China Baowu and Anhui SASAC had been acting in concert prior to the proposed acquisition. Even if they had been acting in concert, China Baowu would become the new leader of a concert group and there would be a fundamental change in the balance of the shareholding in Maanshan Iron.

The Takeovers Panel issued its written decision on 22 July 2019. A copy of the Panel's decision can be found in the "Regulatory functions – Listings & takeovers – Takeovers & mergers – Decisions & statements – Takeovers and Mergers Panel and Takeovers Appeal Committee decisions and statements" section of the SFC's website.

Reminder about offerors' restrictions under Rule 26.4

Rule 26.4 of the Takeovers Code provides that "*except with the consent of the Executive, no nominee of an offeror or persons acting in concert with it may be appointed to the board of the offeree company or any of its subsidiaries, nor may an offeror and persons acting in concert with it exercise offeree company voting rights, until the offer document has been posted*".

In general, the market has complied with this requirement without difficulty, particularly in the appointment of new directors nominated by offerors.

In a recent mandatory general offer, an offeror consulted the Executive about its intention to exercise its voting rights at an annual general meeting of the offeree company which would be held during the offer period but prior to the despatch of the offer document.

One of the rationales behind Rule 26.4 of the Takeovers Code is to encourage an offeror to proceed with its mandatory general offer without undue delay. Until the offer document has been posted, the rule prevents the offeror from exerting any influence on the offeree company and its board of directors by restricting the offeror from: (i) appointing its nominee to the board of the offeree company; and (ii) exercising its voting rights in the offeree company. This is consistent with General Principle 7 which provides that rights of control should be exercised in good faith and the oppression of minority or non-controlling shareholders (including delays in proceeding with an offer) is always unacceptable.

Accordingly, offerors and their advisors should take note of the requirements of Rule 26.4 during an offer. If in doubt, parties must consult the Executive at the earliest opportunity.

Revisions to Practice Note 19 – Chain principle offer price

Recently, we have been consulted on a number of cases involving the application of the chain principle and how the appropriate offer price should be determined where a general offer obligation is required under Note 8 to Rule 26.1 of the Takeovers Code. Practice Note 19 (PN 19) provides guidance on how to determine a chain principle offer price.

When the Pacpo case was considered in 1993, the Panel had taken the value for the relevant companies' "net assets" in determining the appropriate chain principle offer price. At that time, "minority interests" were treated as a liability and the calculation of "net assets" therefore excluded minority interests. Under current accounting standards, "minority interests" or "non-controlling interests" are now set out as a line item under "equity". As such, where there are non-controlling interests, the net assets less non-controlling interests (ie, equity attributable to owners of the company) should normally be taken as the "asset values" to determine a chain principle offer price under the "Pacpo Formula". We have amended PN 19 to clarify this.

A marked-up version and a clean version of the revised PN 19 can be found in the "Regulatory functions – Listings & takeovers – Takeovers & mergers – Practice Notes" section of the SFC website.

Public criticism of CM Asset Management (Hongkong) Company Limited for breaching dealing disclosure requirements

On 11 July 2019, we publicly criticised CM Asset Management (Hongkong) Company Limited (CMAM) for its failure to disclose dealings in the shares of Mengke Holdings Limited (now known as Champion Alliance International Holdings Limited) in breach of Rule 22 of the Takeovers Code. CMAM, acting as the investment manager of Shareholder Value Fund (SVF), executed 26 trades in Mengke Holdings during the offer period. As the investment manager of SVF, CMAM owned or controlled over 5% of Mengke Holdings' issued share capital at the relevant time and was therefore an associate of the company.

A copy of the Executive Statement can be found in the "Regulatory functions – Listings & takeovers – Takeovers & mergers – Decisions & statements – Executive decisions and statements" section of the SFC website.

Reminder to market practitioners

We once again 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 and mergers in accordance with the Takeovers Code. In particular, associates 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.

Quarterly update on the activities of the Takeovers Team

In the three months ended 30 June 2019, we received 13 takeovers-related cases (including privatisations, voluntary and mandatory general offers and off-market and general-offer share buy-backs), six whitewashes and 84 ruling applications.

Useful links

- The Codes on Takeovers and Mergers and Share Buy-backs
- Practice notes
- Decisions and statements
- Previous *Takeovers Bulletins*

All issues of the *Takeovers Bulletin* are available under 'Published resources – Industry-related publications – Takeovers Bulletin' on the SFC website at www.sfc.hk.

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