

TAKEOVERS AND MERGERS PANEL

Panel Decision in Relation to a Proposed General Offer Share Repurchase for Elec & Eltek International Holdings Limited ("E & E")

On 4 July, the Panel considered an application for a waiver under Rule 26 of the Takeovers Code from the general offer requirements of the Takeovers Code in connection with a proposed repurchase of shares of E & E by means of a general offer under the Share Repurchase Code.

The Executive referred the application to the Panel under section 10.1 of the Introduction to the Code because this would be the first general offer repurchase in Hong Kong, and hence "novel".

Under the offer, E & E would purchase 30% of all issued shares in E & E, subject to a maximum number of 301,400,000 shares, tendered by shareholders as shown on the register of members on a certain date in July 1995. The offer price would not exceed \$1.08 per share. The offer would be subject to a number of conditions including, inter alia, an independent vote by shareholders and a waiver from the general offer requirements of the Takeovers Code. Since the controlling shareholders would not accept the offer in respect of the shares owned by them, the shareholdings of the controlling shareholders in E & E could rise from its current level of 48.69% to a maximum of 69.56%, depending upon the degree of shareholder participation in the offer. Accordingly, the applicant had requested a waiver, on behalf of the controlling shareholders, from any obligation under Rule 26.1 (c) or (d) of the Takeovers Code, (the "Creeper" provisions) on the control group to make a general offer under the Takeovers Code.

Between 9 and 16 May 1995 a director of E & E had acquired, through his family trust, 20 million shares of E & E, or approximately 2% of the issued shares, at prices ranging from \$0.82 to \$0.86 per share. The director's family trust owned approximately 30% of a private holding company which together with its related parties, in turn controlled 48.69% of the issued shares of E & E. The remaining shareholdings in the holding company were owned by three other E & E directors and/or their family trust in the proportion of 30%, 30% and 10%.

The applicant sought the Panel's views on the share acquisition. The director submitted that at the time of the share acquisition, he did not contemplate the offer and was not even

aware of the process whereby share repurchases could be made by means of a general offer. Further, the applicant submitted that, except for the purchase of the 20 million E & E shares, which was intended as a long-term investment, his family trust had not traded in the shares of E & E since the company was first listed on the Stock Exchange of Hong Kong Limited.

The Panel considered that it was unfortunate that the share acquisition took place at a time so close to the proposed share repurchase but noted that the director involved had voluntarily undertaken not to sell any of the 20,000,000 E & E shares in the 6 months following completion of the offer. The Panel considered that the share purchase did not affect the Panel's decision to grant a waiver from Rule 26 and raised no other issues under the Share Repurchases Code. It was for other agencies to decide whether the share purchases raised issues under other regulations.

Rule 8 of the Share Repurchase Code and Rule 32 of the Code both provide that a waiver from the requirement to make a mandatory offer in accordance with Rule 26 of the Code will normally be granted if the implications of the share repurchase are disclosed in the offer document and the share repurchase is approved in accordance with the Share Repurchase Code by those shareholders who could not become obliged to make a mandatory offer as a result of the share repurchase. Since the offer would be subject to independent shareholders' approval, the Panel considered that the proposed general offer share repurchase would be in compliance with the Share Repurchase Code provided all material information was disclosed in the share repurchase offer document. In particular, the Panel requested the parties to include a profit estimate in quantitative terms for the year ended 30 June 1995, and a proforma statement of adjusted net asset value as at 30 June 1995, as well as a detailed discussion of the prospects of E & E in the offer document.

Under the offer, if shareholders indicate that it is their preference to hold board lots of 5,000 shares, E & E will also take up any odd lots held by shareholders at any time, providing this would not result in the aggregate number of shares purchased by E & E exceeding 301,380,161 shares. Such odd lots will be taken up after any excess tenders to the offer are taken up. The Panel saw no reason why this was not consistent with Rule 1 of the Share Repurchase Code which provides that, "offerors are encouraged to round up each shareholder's pro rata entitlement to the nearest board lot unless precluded from doing so due to related regulatory or financial considerations to avoid the creation of odd lots as the result of a partial share repurchase."

10 July 1995