

## TAKEOVERS AND MERGERS PANEL

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### **Panel Decision in relation to an application to the Takeovers Panel for review of the Executive's ruling regarding the break up of a concert party holding shares in Golden Power International Holdings Limited**

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Upon the application of Mr. Chan Siu Chi Lawrence, the Takeovers Panel met on 21 April 1998 to review a ruling made by the Executive on 26 March 1998.

#### **Salient Facts**

In around May 1993, Messrs. Chu King Shing, Chu King Tien and the Applicant established a company named Forever Gain Investment Corporation to hold about 19% of the then issued share capital of Golden Power International Holdings Limited. In November 1993, the three individuals applied to the Executive for a ruling that they were acting in concert to consolidate control in Golden Power. The Executive granted the requested ruling in 1993. In January 1998, the Applicant applied to the Executive to seek a confirmation that he was not a party acting in concert with Chu King Shing and Chu King Tien. The principal reason given in support of the application was that the concert party formed in 1993 had ceased to exist when Forever Gain was liquidated in November 1997 and when the Golden Power shares held by that company were distributed in specie to companies controlled by the three individuals respectively. The Executive ruled on 26 March 1998 that based on the information made available to them, they were unable to conclude that the Applicant was not acting in concert with Chu King Shing and Chu King Tien. The Applicant applied to the Panel for a review of this ruling.

#### **Panel's Decision**

The Panel considered the written submissions made on behalf of the Applicant and the oral testimony of the Applicant during the Panel hearing held on 21 April. After taking all facts of the matter into consideration, the Panel decided that there was not sufficient evidence to show that the Applicant, Chu King Shing and Chu King Tien were no longer acting in concert to consolidate control in Golden Power. As there was no clear evidence to show that the concert party had broken up, the Panel concluded that the concert party was still in existence. It was, however, open to the parties in relation to any subsequent

actions to rebut this state of affairs. In making this decision, the Panel had had regard to Note 3 to the definition of "*acting in concert*" which states that when a ruling or admission has been made that a group of persons is or has been acting in concert, it will be necessary for clear evidence to be presented before it can be accepted that they are no longer acting in concert.