PANEL ON TAKEOVERS AND MERGERS

Walsin Hong Kong Corporation Limited ("Walsin")
Offer for
Success Holdings Limited ("Success")

Independence of financial adviser:
Seapower Corporate Finance Limited ("SCFL")

Introduction

1. The Panel met on 7 January 1993 to hear an application for review by Seapower against a ruling by the Executive that SCFL was not suitable to give independent advice to the minority shareholders of Success pursuant to Rule 2 of the Code on Takeovers and Mergers ("the Code").

Background

2. By a joint announcement dated 15 December, Walsin, Success and International Tak Cheung Holdings Limited ("ITC") announced that Walsin had conditionally agreed to purchase from ITC Chevy Investments Limited ("Chevy"), which held 64 million shares in Success, for a consideration of $198.4 million, or $3.10 per Success share. Walsin and its associates already held 24% of the shares in Success, and the transaction would take their aggregate holding to 64.2%. The announcement stated that Peregrine Capital Limited ("Peregrine Capital") would make an unconditional general offer for all issued shares in Success other than those held by Chevy at $3.10 per share and that ITC had undertaken not to accept the offer in respect of 13,687,700 shares it retained, representing approximately 8.6% of the issued share capital of Success. The announcement also stated that SCFL had been appointed to advise the shareholders of Success other than Walsin regarding the offer. All of the directors of Success are also directors of ITC and therefore an independent committee of the board cannot be formed.

3. In the matter before the Panel, the Executive decided that SCFL cannot be regarded as suitable to give independent advice to the minority shareholders of Success because the Executive viewed various shareholdings common to the Seapower and Peregrine groups and various other business and working relationships between the executives and shareholders of the groups as creating a conflict of interest. The Executive relied upon Rule 2 and in particular paragraphs 2.6 and 2.7 and also Note 2 to Rule 2. For its part, SCFL vigorously denied that any of the relationships quoted by the Executive affected its independence and it challenged the Executive's interpretation of Rule 2.

4. A chart showing shareholdings of the Seapower and Peregrine groups is attached as **Appendix 1**.

Code Issues

5. Rule 2 of the Code is a new Rule introduced in the revision of the Code which became effective 1 April, 1992. The purpose of the Rule is to ensure that minority shareholders in both the offeror and offeree companies are provided with independent advice as to the merits of an offer.

6. Rule 2.1 addresses, specifically, the obligations which fall upon the board of an offeree company which receives an offer or is approached with a view to an offer being made. Rule 2.1 provides that, "A board which receives an offer... should, in the interest of shareholders, retain an independent financial adviser to advise the board as to whether the offer is, or is not, fair and reasonable.... If any of the directors of an offeree company is faced with a conflict of interest, the offeree board should, if possible, establish an independent committee of the board to discharge the board's responsibilities in relation to the offer."

7. There are a number of other paragraphs contained in Rule 2 which address particular types of transactions and circumstances. There are also some notes to the Rule which provide guidelines. Paragraphs 2.6 and 2.7 provide examples as to the types of persons who would most likely not be suited to give independent advice. Note 1 provides some examples of possible conflicts of interest. Note 2 deals with a particular situation regarding an offer made by or with the co-operation of controlling shareholders. Paragraphs 2.6 and 2.7 and Notes 1 and 2 are set out in **Appendix 2**.

8. Rule 2 is, along with all the other Rules of the Code, subject to the overriding statement in the Introduction to the General Principles that "it is impracticable to devise rules in sufficient detail to cover all circumstances which can arise in offers. Accordingly, persons engaged in offers should be aware that the spirit as well as the precise wording of the General Principles and Rules must be observed. Moreover, the General Principles and the spirit of the Code will apply in areas or circumstances not explicitly covered by any Rule".

Decision

9. The Panel has decided that, in this particular case, SCFL is not appropriate to be the independent financial adviser to the minority shareholders of Success. While the Panel's decision is in no way based on any doubts regarding SCFL's competence or conduct, in the Panel's view the minority shareholders of Success could reasonably perceive a lack of independence on the part of SCFL in light of the following principal factors:

(a) The Chairman of SCFL is Mr. Francis Yuen.

(b) Peregrine Capital, a member of the Peregrine group, is the Financial Adviser to the offeror.

(c) The Managing Director of Peregrine Capital is Mr. Francis Leung.

(d) Mr. Yuen informed the Panel that he is the Managing Director of the Seapower group and exercises management control through that position. It was apparent to the Panel that he was the driving force behind the establishment of SCFL in April 1992 and very much involved in its business. Indeed, Mr. Yuen informed the Panel that, presently, SCFL has only two other executives. Mr. Yuen, himself, conducted the negotiations which led to the appointment of SCFL in the transaction.

(e) Tien Fung Investment Holdings Ltd ("Tien Fung") is a company which has a 19.8% holding in Seapower International Holdings Ltd.

(f) Both Mr. Yuen and Mr. Leung are key directors of Tien Fung. The Peregrine group has a 49% interest in Tien Fung, whereas Mr. Yuen

owns the remaining 51%. Mr. Leung represents the Peregrine group in connection with a substantial investment it has with Mr. Yuen.

10. The Panel also considers it significant that there are no independent directors on the board of the offeree and therefore there is no possibility of an independent committee of the offeree's directors being formed.

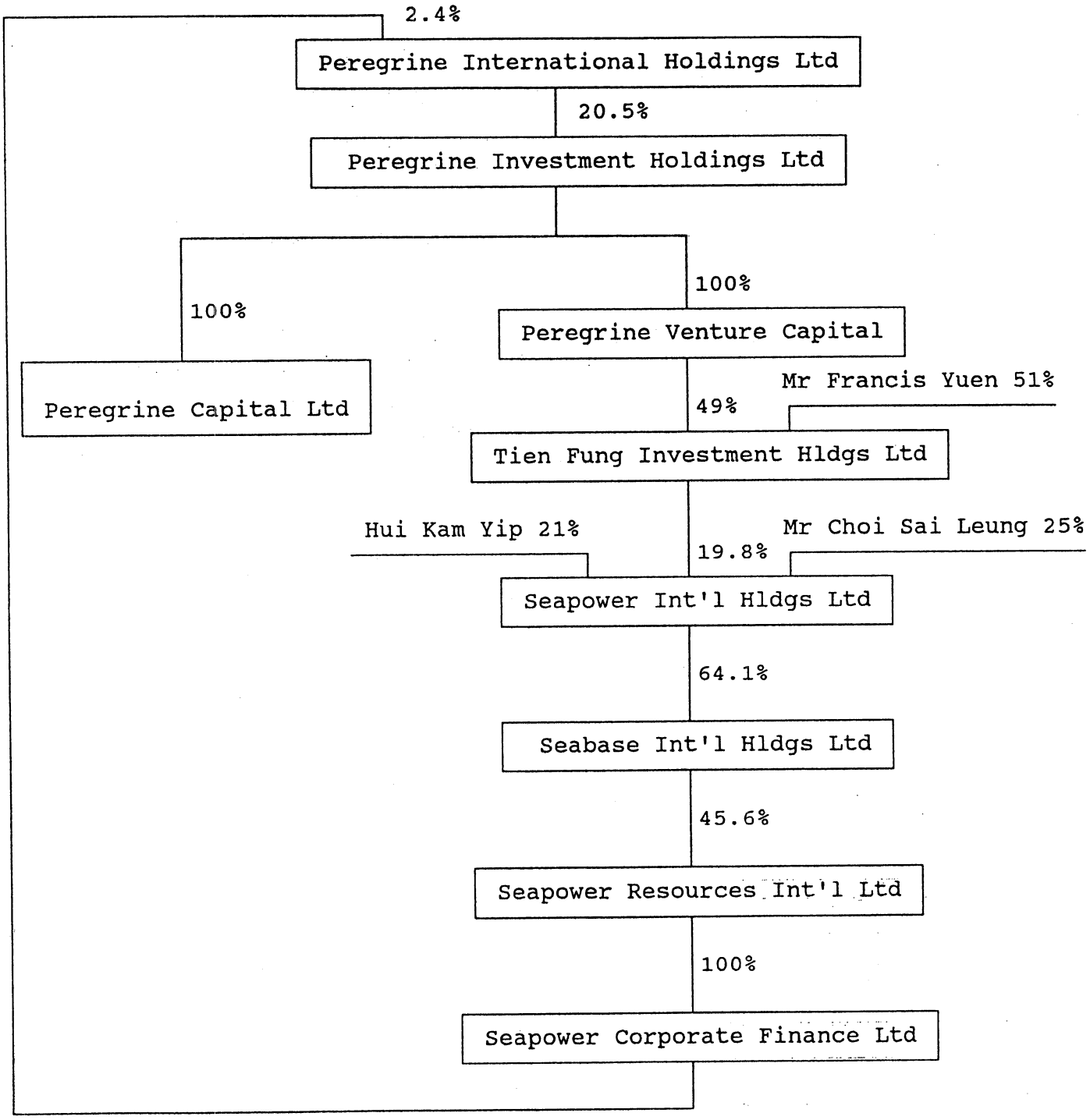
11. The Panel, in making its ruling, wishes to point out that in interpreting Rule 2, practitioners must always be cognisant of its main objective, which is the provision of clearly independent advice to minority shareholders. The Panel wishes to make it clear that paragraphs 2.6 and 2.7 are not meant to be exhaustive but rather illustrative exclusionary provisions.

12. Practitioners should consult the Executive before accepting any appointment if there is any possibility of a doubt about their independence which might arise. Practitioners should also bring to the attention of the Executive all information which may be relevant to the issue of independence in order that the Executive can make a fully informed decision.

13 January 1993

Appendix 1

RELATIONSHIP BETWEEN PEREGRINE CAPITAL LTD AND SEAPOWER CORPORATE FINANCE LTD



2.6 Persons not suited to give independent advice

A person who has, or had, a connection, financial or otherwise, with the offeror or offeree company of a kind likely to create a conflict of interest will not be regarded as a suitable person to give independent advice.

2.7 Independent financial advisers and independent shareholders

A financial adviser will not normally be considered to be independent if he is considered to have a relationship with the offeror, the offeree company, or the controlling shareholder(s) of either of them, which is reasonably likely to affect the objectivity of his advice. If there are shareholders who are not independent because they have an interest in the proposed transaction other than their interest as a shareholder of the offeror or offeree company, as the case may be, the independent adviser should endeavour to represent the best interests of the offeror or the offeree company, respectively, by concerning itself only with the interests of the independent shareholders, i.e. those shareholders of the company who have no interest in the proposed transaction other than their interest as a shareholder of the company.

Notes

1. Conflicts of interest

A conflict of interest will exist, for instance, when there are significant cross-shareholdings between an offeror and the offeree company, when one or more directors are common to both companies or when a person is a substantial shareholder in both companies.

A financial adviser may have the opportunity to act for an offeror or the offeree company in circumstances where the adviser is in possession of material confidential information relating to the other party, for example, because it was a previous client or because of involvement in an earlier transaction. This will often necessitate the financial adviser declining to act, for example, because the information is such that a conflict of interest is likely to arise. Such a conflict will normally be incapable of resolution simply by isolating information within the relevant organisation or by assigning different personnel to the transaction.

2. Offer made by or with the co-operation of controlling shareholders

The requirement for competent independent advice for shareholders is of particular importance in respect of offers made by or with the co-operation of controlling shareholders. An independent adviser for the independent shareholders is essential and its responsibility is considerable. Because of this, it is all the more important that its competence and independence from the parties involved should be beyond question. In such cases, the reasons for advice are of particular importance.

The Executive will normally require the formation of an independent committee of the offeree's board of directors in these cases if it is possible for an independent committee to be formed. The responsibilities of the committee would include instructing and dealing with the independent adviser, and generally protecting the interests of the independent shareholders.