

## Takeovers Executive of the SFC criticises Mr Wen Yibo for breaching the prohibition in Rule 31.3 of the Takeovers Code

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### Criticism on Mr Wen Yibo

1. The Executive publicly criticises Mr Wen Yibo (“**Mr Wen**”) under section 12.3 of the Introduction to the Code on Takeovers and Mergers (“**Takeovers Code**”) for acquiring shares in Sound Global Limited (“**Sound Global**”) within 6 months after the close of an offer at above the offer price in contravention of Rule 31.3 of the Takeovers Code.

### Background and relevant provisions of the Takeovers Code

#### *Background*

2. Sound Global’s shares are currently listed on the Main Board of the Stock Exchange of Hong Kong Limited. The shares were also listed on the Official List of the Singapore Exchange Securities Trading Limited until 27 January 2014. Sound Global is principally engaged in providing turnkey water and wastewater treatment solutions, management of water treatment plants and investments in build, operate and transfer projects, mainly in the PRC.
3. On 10 September 2013, Sound Global and Sound (HK) Limited issued a joint announcement about the voluntary delisting of Sound Global from the Official List of the Singapore Exchange Securities Trading Limited. In order to facilitate the delisting, Sound (HK) Limited made a conditional cash offer for all the shares in Sound Global (“**2013 Offer**”). The offer price for each share under the 2013 Offer was \$4.37 (SG\$0.7).
4. Sound (HK) Limited is wholly owned by Sound Group Limited. Sound Group Limited is beneficially owned as to 99.83% by Mr Wen and his wife, Ms Zhang Huiming (“**Ms Zhang**”).
5. The 2013 Offer closed on 17 January 2014. Between 28 March 2014 and 9 May 2014 Mr Wen and Sound Water (BVI) Limited (“**Sound Water**”) acquired a total of 5,600,000 Sound Global shares at prices ranging from \$5.94 to \$7.55 per share in a series of on-market purchases (the “**Relevant Transactions**”). The Relevant Transactions account for 0.38% of the shareholding interest of Sound Global as at 9 May 2014. Sound Water is beneficially owned as to 90% by Mr Wen and 10% by Ms Zhang.

#### *Relevant provisions under the Takeovers Code*

##### *Rule 31.3*

6. Rule 31.3 of the Takeovers Code states that “*Except with the consent of the Executive, if a person, together with any person acting in concert with him, holds more than 50% of the voting rights of a company, neither that person nor any person acting in concert with him may, within 6 months after the end of the offer period of any previous offer made by him to the shareholders of that company which became or was declared unconditional, make a second offer to, or acquire any shares from, any shareholder in that company at a higher price than that made available under the previous offer. For this purpose the value of a securities exchange offer shall be calculated as at the day the offer became, or was declared, unconditional.*”

### **Breach of Rule 31.3 of the Takeovers Code**

7. Rule 31.3 of the Takeovers Code prohibited Mr Wen and his concert parties from buying Sound Global shares at prices higher than \$4.37 per share for a period of 6 months after the close of the 2013 Offer on 17 January 2014. The purchases by Mr Wen of 5,600,000 Sound Global shares at prices higher than \$4.37 breached Rule 31.3.

### **Mr Wen's submissions**

8. Mr Wen reported the Relevant Transactions to the Executive on 25 July 2014. He admitted that the breaches were due to his inadvertent oversight and that he was not aware of the prohibition under Rule 31.3.
9. Mr Wen has explained that the Relevant Transactions were carried out because he was optimistic about Sound Global's business growth and future prospects. In addition, he wished to maintain his level of shareholding interest in Sound Global which had been diluted as a result of the exercise of various convertible securities by other parties. All the Relevant Transactions were publicly disclosed under Part XV of the Securities and Futures Ordinance.
10. Mr Wen was deeply remorseful for the non-compliance. He has undertaken to the Executive that that he will take all steps to ensure compliance with the relevant regulatory requirements (including but not limited to the Takeovers Code) in the future.

### **Implications of Mr Wen's failure to comply with Rule 31.3 of the Takeovers Code**

11. The Executive has carefully considered the facts of this case and Mr Wen's representations. Mr Wen accepts that he has breached Rule 31.3 of the Takeovers Code. The Relevant Transactions constitute a breach of a fundamental provision of the Takeovers Code which is designed to protect the investing public. Mr Wen has agreed to the disciplinary action taken against him under section 12.3 of the Introduction to the Takeovers Code. In reaching the decision to issue this criticism, the Executive has taken into account the inadvertent nature of the breach and his co-operation with the Executive's enquiry into this matter.
12. Finally the Executive wishes to take this opportunity to remind all those involved in takeovers and mergers in Hong Kong of the prohibition imposed by Rule 31.3 of the Takeovers Code. Rule 31.3 affords equality of treatment to shareholders in an offer in accordance with General Principle 1 of the Takeovers Code. The rule provides shareholders with certainty that the offeror will not pay a price higher than the offer price for the shares in the offeree company in the 6-month period after the close of the offer, and as a result, it ensures that all shareholders of the offeree company are treated even-handedly.
13. If there is any doubt about the application of the Takeovers Code, the Executive should be consulted at the earliest opportunity.