

## TAKEOVERS AND MERGERS PANEL

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### Panel Decision

**In relation to a referral by the Takeovers Executive to the Takeovers and Mergers Panel (the "Panel") for a ruling on whether the mandatory general offer obligation that would result from the proposed transfer of an interest in Magang (Group) Holding Company Limited, the controlling shareholder of Maanshan Iron & Steel Company Limited (the H shares of which are listed on the Hong Kong Stock Exchange under stock code 323), should be waived, and, if not, the applicable offer price per H share for the purposes of the offer**

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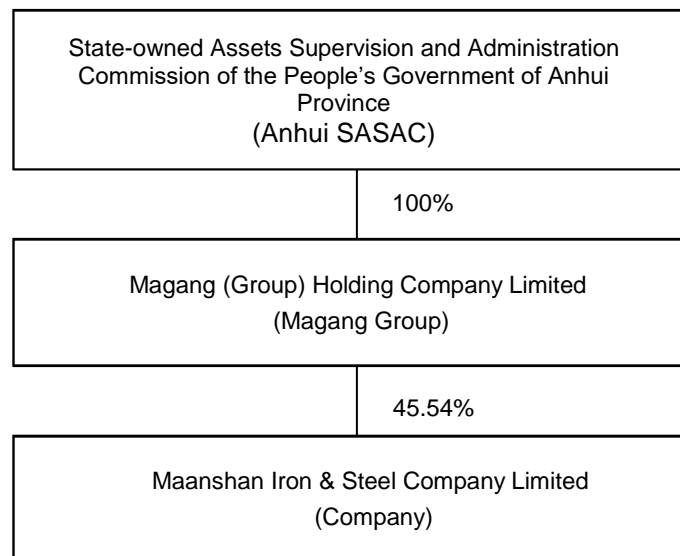
### Purpose of the hearing

1. The Panel met on 19 June, 2019 to consider a referral by the Takeovers Executive under section 10.1 of the Introduction to the Code on Takeovers and Mergers (the "**Takeovers Code**") and Share Buy-backs (together, the "**Codes**"), which relates to a particularly novel, important or difficult point at issue.
2. The Panel was asked to consider the following:
  - (A) Whether a waiver of the obligation of China Baowu (as defined below) to make a mandatory general offer upon completion of the Proposed Transfer (as defined below) under Rule 26.1 of the Takeovers Code should be granted pursuant to Note 6(a) to Rule 26.1 of the Takeovers Code.
  - (B) If no such waiver should be granted, what applicable price per H share should be used for the purposes of the general offer.
3. The Panel was asked by China Baowu to consider whether it would agree to delay publishing its decision for one month as its publication would be prejudicial to the interests of China Baowu since it would require time to consider whether, and, if so, how it may proceed with the proposed transaction.

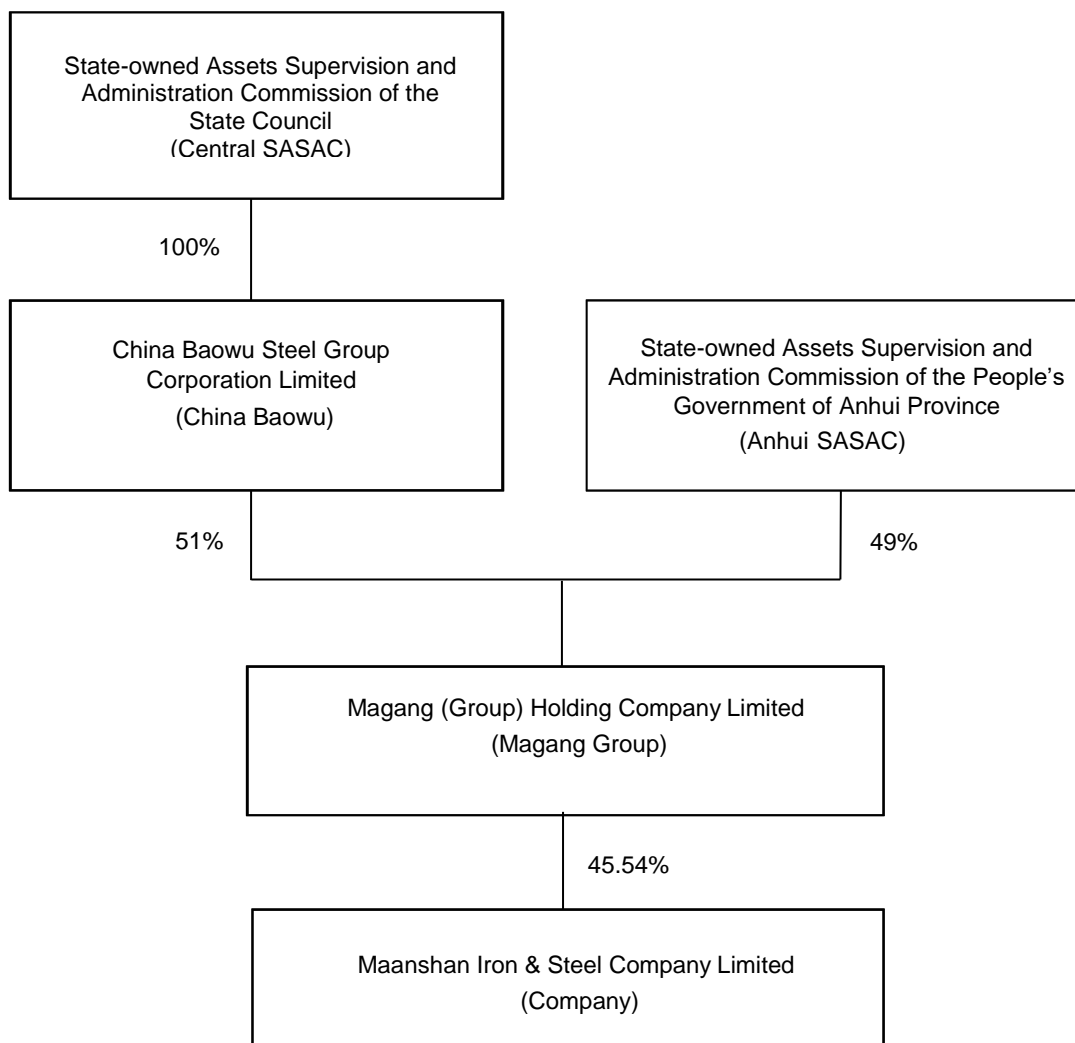
## Background and facts

4. Maanshan Iron & Steel Company Limited (the "**Company**") is a joint stock company incorporated in the People's Republic of China ("**PRC**"), the H shares of which are listed on the Main Board of The Stock Exchange of Hong Kong Limited (stock code: 323) and the A shares of which are listed on the Shanghai Stock Exchange (stock code: 600808).
5. As at 31 May, 2019, the Company had a total of 7,700,681,186 shares in issue, comprising 5,967,751,186 ordinary A shares and 1,732,930,000 ordinary H shares, which respectively represent approximately 77.5% and approximately 22.5% of its total issued share capital.
6. Magang (Group) Holding Company Limited ("**Magang Group**"), a state-owned company incorporated in the PRC, is wholly-owned by the State-owned Assets Supervision and Administration Commission of the People's Government of Anhui Province ("**Anhui SASAC**"). Magang Group holds 3,506,467,456 A shares in the Company, representing approximately 45.54% of the voting rights in the Company. Magang Group recognises the Company as a subsidiary.
7. As at the end of 2018, the total assets and the total profits of the Company represented significant amounts in relation to Magang Group (see paragraph 21 below for more details).
8. China Baowu Steel Group Corporation Limited ("**China Baowu**"), a state-owned company incorporated in the PRC, is wholly-owned by the State-owned Assets Supervision and Administration Commission of the State Council of the PRC ("**Central SASAC**").
9. Anhui SASAC proposes to transfer 51% of the equity interests in Magang Group to China Baowu for nil consideration (the "**Proposed Transfer**"). The effectiveness of the transfer agreement, and hence the completion of the Proposed Transfer, is subject to obtaining the approvals from various PRC governmental authorities. It is also understood that approvals are or may be required from Central SASAC, Anhui SASAC, the China Securities Regulatory Commission, the PRC State Administration for Market Regulation and other relevant anti-trust regulatory authorities (if any).
10. The Proposed Transfer was first publicly disclosed on 2 June, 2019 when the Company published an announcement ("**Rule 3.7 Announcement**") under Rule 3.7 of the Takeovers Code announcing that Anhui SASAC and China Baowu had entered into an agreement in respect of the Proposed Transfer.
11. A simplified shareholding structure of the Company, setting out the relevant shareholding before and after completion of the Proposed Transfer, is set out below.

Before completion



After completion



12. Upon completion of the Proposed Transfer, China Baowu would own 51% of the equity of Magang Group and would become the controlling shareholder of Magang Group and Anhui SASAC would own the remaining 49% of the equity and would cease to be the controlling shareholder of Magang Group. As a result, China Baowu would be able to control the approximately 45.54% of the voting rights in the Company held by Magang Group.

### China Baowu's case

13. On 30 May, 2019, China Baowu applied to the Executive for a waiver ("**Waiver**") of the obligation to make a mandatory general offer, which would be triggered upon completion of the Proposed Transfer under Rule 26.1 of the Takeovers Code.
14. The background and main reasons for the Proposed Transfer as submitted by China Baowu are summarized as follows:
  - (A) China Baowu is wholly-owned by Central SASAC. As at 31 December, 2018, China Baowu had a registered capital of approximately RMB52.79 billion, a total asset value of approximately RMB711.8 billion and a net asset value of approximately RMB360.9 billion. China Baowu group has a total steel production capacity of 70 million tonnes, ranking first in the PRC and second worldwide. For the year ended 31 December, 2018, China Baowu recorded operating revenue of approximately RMB438.6 billion and total profits of approximately RMB33.84 billion.
  - (B) Magang Group is wholly-owned by Anhui SASAC. As at 31 December, 2018, Magang Group had a registered capital of approximately RMB6.29 billion, a total asset value of approximately RMB97 billion and a net asset value of approximately RMB39.92 billion. For the year ended 31 December, 2018, Magang Group's steel production capacity amounted to 21.70 million tonnes and it had an operating revenue of approximately RMB91.78 billion and total profits of approximately RMB8.95 billion.
  - (C) The Proposed Transfer is driven by the PRC government's overall policy and strategy in relation to the restructuring of its iron and steel industry.
  - (D) The Proposed Transfer is a proposed restructuring of state-owned assets with the main aim and objective of consolidating the iron and steel production operations of China Baowu and Magang Group. This restructuring would increase the degree of market player concentration within the PRC iron and steel industry and thus improve the global competitiveness of the enlarged and consolidated China Baowu group.
  - (E) Pursuant to the Guiding Opinion on Promoting the Merger and Reorganisation of the Iron and Steel Industry to Dispose of Non-viable Companies (《關於推進鋼鐵產業兼併重組處置僵屍企業的指導意見》) issued by the State Council of the PRC in September 2016 (the "**State Policy**"), it was provided that, by 2025, the consolidated production capacity of the top ten enterprises in the PRC iron and steel industry should account for over 60% of the overall production capacity of the entire industry in the PRC, and that amongst these ten there should be three to four large-scale

iron and steel conglomerates, each with a production capacity of at least 80 million tonnes.

- (F) The Proposed Transfer, if implemented, would likely enable the enlarged and consolidated China Baowu group to achieve a production capacity of at least 80 million tonnes and qualify as a large-scale iron and steel conglomerate under the State Policy.
  - (G) The Proposed Transfer is being initiated with the support of Central SASAC to implement and support the PRC government's overall policy and strategic planning in relation to the long-term development of the PRC iron and steel industry.
15. The main reasons submitted by China Baowu that the Waiver should be granted are summarized below:
- (A) China Baowu and Anhui SASAC are parties acting in concert, and the Proposed Transfer at nil consideration is being done under the unique facts and circumstances of this case, which should justify the granting of the Waiver under Note 6(a) to Rule 26.1 of the Takeovers Code, or alternatively, under section 2.1 of the Introduction to the Codes.
  - (B) China Baowu and Anhui SASAC should be considered as members of a concert group for the following reasons:
    - (i) The Proposed Transfer would enable China Baowu to acquire the entire 51% of Magang Group for nil consideration so that China Baowu would be able to consolidate the iron and steel production of the Company and Magang Group and achieve concentration of production capacity in furtherance of the State Policy. This demonstrates that the Proposed Transfer is not a typical commercial transaction, since valuable assets would be transferred at nil consideration. The purpose of the Proposed Transfer at nil consideration shows that China Baowu and Anhui SASAC are actively acting in concert by cooperating to achieve such concentration and consolidation.
    - (ii) Upon completion of the Proposed Transfer, each of China Baowu and Anhui SASAC would hold over 20% of the equity interest in Magang Group and would fall within the definition of "associated company" in the Codes. Therefore, China Baowu and Anhui SASAC should be presumed to be parties acting in concert under Class (1) of the presumptions of acting in concert as set out in the Codes.
    - (iii) The proposed transfer of interest in Magang Group by Anhui SASAC to China Baowu at nil consideration would fall within Note 10 to the definition of "acting in concert" in the Codes as a transfer of voting rights as a gift or at nominal consideration. Therefore, China Baowu and Anhui SASAC should be presumed to be parties acting in concert under Class (9) of the presumptions of acting in concert as set out in the Codes.
  - (C) The Proposed Transfer is unique and special as it is made in accordance with specific PRC laws that regulate the transfers of state-owned assets at nil consideration. This is done with the intent of enabling China Baowu

to consolidate the iron and steel businesses of the Company and Magang Group so as to achieve greater concentration of iron and steel production in furtherance of the State Policy.

- (D) Even though not all levels of State-owned Assets Supervision and Administration Commission (“**SASAC**”) should automatically be regarded as acting in concert, Central SASAC (the ultimate controller of China Baowu) and Anhui SASAC either are actually or should be presumed to be acting in concert with each other in the current unique situation of the Proposed Transfer at nil consideration pursuant to PRC laws.
- (E) China Baowu and Magang Group had a relatively long historical relationship with each other since they were both controlled and regulated by the Department of Metallurgy of the State Council from 1977 until the Department of Metallurgy of the State Council was dismantled in 2001.
- (F) There is no change in the ultimate beneficial ownership of Magang Group following the Proposed Transfer since control is merely being transferred from a lower level provincial SASAC to a higher level central SASAC and, as such, it would remain ultimately wholly-owned by the PRC government.
- (G) The Proposed Transfer, being at nil consideration, is a policy-driven action rather than a pure commercial transaction.
- (H) With respect to the Company’s A share listing on the Shanghai Stock Exchange, a transfer of state-owned assets at nil consideration that is approved by the relevant government authorities is a recognized ground for a waiver of the obligation to make a general offer under PRC takeover regulations.
- (I) China Baowu also argued that a waiver could, alternatively, be granted under section 2.1 of the Introduction to the Codes on the basis that the strict application of Rule 26.1 of the Takeovers Code would operate in an unnecessarily restrictive or unduly burdensome, or otherwise inappropriate, manner.

Section 2.1 of the Introduction to the Codes provides:

*The Codes share common definitions and the General Principles. The General Principles are essentially statements of good standards of conduct to be observed in takeovers, mergers or share buy-backs. The General Principles are expressed in broad general terms and do not define the precise extent or the limits of their application. The Executive and the Panel apply the General Principles in accordance with their spirit and may modify or relax the effect of the language to achieve their underlying purposes.*

*In addition to the General Principles, each of the Codes contains a series of Rules, some of which are effectively expansions of the General Principles and examples of their application and others are rules of procedure designed to govern specific types of takeovers, mergers or share buy-backs. Although the Rules are expressed in more detailed language than the General Principles, they, like the General Principles,*

*are to be interpreted to achieve their underlying purposes. Accordingly, each of the Codes, through the General Principles, may apply to situations not specifically covered by any Rule. Therefore, the spirit of the Rules must be observed as well as their letter and the Executive and the Panel may each modify or relax the application of a Rule if it considers that, in the particular circumstances of the cases, strict application of a Rule would operate in an unnecessarily restrictive or unduly burdensome, or otherwise inappropriate, manner.*

- (J) The Panel should grant a waiver since the circumstances are such that it is special and unique, involving the transfer of state-owned assets between two levels of SASAC entirely at nil consideration pursuant to specific PRC laws and cannot be readily replicated in commercial transactions.
16. On the question of applicable offer price, China Baowu argued that it should be based on the volume weighted average price (“**VWAP**”) of the H shares of the Company on the last trading day prior to the Rule 3.7 Announcement.
17. China Baowu disagreed with the Executive’s view that the applicable offer price should be by reference to the VWAP of the H shares of the Company on the day when China Baowu announces its firm intention to make an offer (see the Executive’s case below).
18. The market price of the Company’s H shares following the Rule 3.7 Announcement would have been affected by the possibility of a general offer that may result from the Proposed Transfer. The price of the H shares of the Company, having been so affected, would, in the view of China Baowu, be unfair. On the contrary, the VWAP of the H shares of the Company on the last trading day prior to the Rule 3.7 Announcement would not have been so affected.
19. China Baowu also requested the Panel to delay publishing its decision for one month as it would need time to consider the Panel’s decision and whether, and, if so, how it may proceed with the proposed transaction. China Baowu submitted that it would not wish the Panel’s decision to be released before it is able to make an announcement regarding its intention.

### **The Executive’s case**

20. Rule 26.1 lies at the heart of the Takeovers Code and sets out the circumstances when a mandatory general offer obligation is incurred. Once a mandatory general offer obligation is triggered, it forms the starting point for any analysis as to whether a waiver should be granted. Waivers are a concession and should only be granted in a comparatively narrow range of circumstances. Any waiver will be very strictly regulated by the Executive. In particular, the Haeco Case (as defined below) demonstrated that Note 6(a) to Rule 26.1 of the Takeovers Code should be given a narrow interpretation.
21. China Baowu accepted that:
- (A) upon completion of the Proposed Transfer, China Baowu would acquire

statutory control of Magang Group, which in turn controls approximately 45.54% of the voting rights in the Company;

- (B) as at 31 December, 2018, the total assets of the Company represented approximately 79.25% of the total assets of Magang Group; and
- (C) for the year ended 31 December, 2018, the total profits of the Company represented approximately 92.11% of the total profits of Magang Group.

Accordingly, Magang Group's holding in the Company would be significant in relation to Magang Group under the chain principle set out in Note 8 to Rule 26.1 of the Takeovers Code.

- 22. Upon completion of the Proposed Transfer, China Baowu would trigger a mandatory general offer pursuant to the "chain principle" under Rule 26.1 of the Takeovers Code.
- 23. Note 6(a) to Rule 26.1 of the Takeovers Code sets out clearly the factors that must be taken into account in considering whether a waiver may be granted, i.e. (i) whether there has been a change in the leader of the relevant concert group and whether the balance between the shareholdings of the group has changed significantly; (ii) the price paid for the shares acquired; and (iii) the relationship between the persons acting in concert and how long have they been acting in concert.
- 24. To put it simply, Note 6(a) to Rule 26.1 of the Takeovers Code provides that a waiver from the general offer obligation may be granted, if in the true sense of the words there is not a change in control in question, and, on the basis that a concert party group was in existence in the first place.
- 25. The Panel decision regarding the transfer of interest in Hong Kong Aircraft Engineering Company Limited ("**Haeco Case**") in 2008 laid down clear guidance that Note 6(a) to Rule 26.1 of the Takeovers Code should be given a narrow interpretation. This is consistent with General Principle 2 of the Codes, which provides that if control of a company changes or is acquired or consolidated, a general offer to all other shareholders is normally required.
- 26. China Baowu and Anhui SASAC should not be considered to be parties acting in concert for the following reasons:
  - (A) The Executive has for some time taken the view that different levels of SASAC should not be considered to be acting in concert with each other. That this view is well understood and takes into account the practical reality that Central SASAC does not normally manage assets that are held by lower level SASAC and that it would be impracticable to recognize Central SASAC to be acting in concert with other levels of SASAC, as such a position would result in most PRC state-owned enterprises being viewed as members of a single concert group, which would in turn lead to any general offer in accordance with the Takeovers Code involving a state-owned enterprise becoming unmanageable. This view is also based on the Executive's experience, developed over the years through various different submissions by professional parties, that different levels of SASAC operate largely independently of each other.
  - (B) The technical argument that China Baowu and Anhui SASAC should be presumed to be acting in concert once they each hold more than 20% of



the equity of Magang Group should not be acceptable as China Baowu should not be able to rely on the transaction that triggers the mandatory general offer obligation as the basis for granting a waiver of that obligation.

- (C) The argument that China Baowu and Anhui SASAC should be considered to be parties acting in concert under Class (9) of the presumptions of acting in concert as set out in the Codes due to the fact that the Proposed Transfer would be done at nil consideration should not be acceptable. Class (9) of the presumptions in the definition of “acting in concert” is intended to catch situations where a person (other than a commercial bank lending in the ordinary course of business) provides financial assistance to another in connection with the acquisition of voting rights. It is an important presumption, as it is intended to apply to financiers of acquisitions of voting rights, so that they will be considered to be within the same concert group as the actual acquirer of the voting rights. This is not the case here and there is no indication that the purchase price for the 51% equity interest in Magang Group will eventually be paid by China Baowu; and even if it is accepted that Class (9) presumption is applicable, such presumed concert party relationship can only be formed as a result of the Proposed Transfer and cannot be characterized as a concert group of a prolonged duration (being one of the factors set out in Note 6(a) to Rule 26.1 of the Takeovers Code).
  - (D) No evidence has been provided by China Baowu to show that the alleged concert group of China Baowu and Anhui SASAC had been in existence for some time prior to the Proposed Transfer. In other words, if Anhui SASAC and China Baowu were in-fact acting in concert in relation to the Company for some time, there should be clear evidence to support this fact.
  - (E) The main argument provided by China Baowu that the Proposed Transfer is at nil consideration is not in itself sufficient for the Executive to grant a waiver from the mandatory general offer obligation.
27. The Executive also informed the Panel that there were three cases during the period between 2007 and early 2008 (“**2007-2008 cases**”) (before the Haeco Case) where the Executive exercised its power under section 2.1 of the Introduction to the Codes to grant waivers from the obligation to make a mandatory general offer involving transfers of equity interests between different levels of SASAC at nil considerations.
28. The Executive no longer considers the 2007-2008 cases as good precedents following the clear guidance regarding the interpretation of Note 6(a) to Rule 26.1 of the Takeovers Code laid down in the Haeco Case.
29. On the question of the applicable price for the general offer, the Executive submits that the price should be the VWAP of the H shares of the Company on the day when China Baowu announces its firm intention to make a general offer. The main reasons are summarized as follows:
- (A) It was decided in the decision reached by the Committee on Takeovers and Mergers (being the predecessor to the Takeovers Panel) in relation to Jademan (Holdings) Limited that the applicable offer price when a mandatory general offer was triggered without involving any consideration should be the closing market price on the date on which

the requirement to make a mandatory general offer was triggered.

- (B) The price should be by reference to the VWAP rather than the closing price on the relevant day since the use of VWAP would reduce the possibility of price manipulation, e.g. where a large number of small orders for the shares were placed at the end of the day.
- (C) The price should be determined at the time when China Baowu has decided to proceed with the Proposed Transfer, i.e. when China Baowu would be required under Rule 3.5 of the Takeovers Code to make an announcement in relation to its firm intention to make an offer. This takes into account of the fact that China Baowu stated in the Rule 3.7 Announcement that it would review whether or not and how best to proceed with the Proposed Transfer if the Waiver is not granted. This would mean that the market would know the offer price once it is known that a general offer will be made.

### **The decision and the reasons for it**

- 30. It is accepted that the Proposed Transfer would result in a change in control of the Company through the application of the chain principle (see paragraph 21 above). As a result, a mandatory general offer obligation would be triggered, unless a waiver is granted.
- 31. The relevant provisions regarding the granting of waivers from making a mandatory general offer obligation are set out in Note 6(a) to Rule 26.1, reproduced below:

*“6. Acquisition of voting rights by members of a group acting in concert*

*While the Executive accepts that the concept of persons acting in concert recognises a group as being the equivalent of a single person, the holdings of members and the membership of such groups may change at any time. This being the case, there will be circumstances when the acquisition of voting rights by one member of a group acting in concert from another member of the concert group or from a non-member, will result in the acquirer of the voting rights having an obligation to make an offer.*

*(a) Acquisitions from another member*

*Whenever the holdings of a group acting in concert total 30% or more of the voting rights of a company and as a result of an acquisition of voting rights from another member of the group a single member comes to hold 30% or more or, if already holding between 30% and 50%, has acquired more than 2% of the voting rights in any 12 month period, an obligation to make an offer will normally arise.*

*In addition to the factors set out in Note 7 to this Rule 26.1, the factors which the Executive will take into account in considering whether to waive the obligation to make an offer include:-*

- (i) *whether the leader of the group or the largest individual shareholding has changed and whether the balance between the shareholdings in the group has changed significantly;*
- (ii) *the price paid for the shares acquired; and*
- (iii) *the relationship between the persons acting in concert and how long they have been acting in concert.*

*The Executive would normally grant the acquirer of such voting rights a waiver from such general offer obligation if:–*

- (i) *the acquirer is a member of a group of companies comprising a company and its subsidiaries and the acquirer has acquired the voting rights from another member of such group of companies; or*
- (ii) *the acquirer is a member of a group of persons comprising an individual, his close relatives and related trusts, and companies controlled by him, his close relatives or related trusts, and the acquirer has acquired the voting rights from another member of such group of persons.”*

- 32. The first part of Note 6(a) sets out the relevant provisions for considering whether a waiver from the obligation to make a mandatory general offer may be granted. The second part of Note 6(a) relates to transfers amongst group companies and close family members and are not relevant here.
- 33. Note 6(a) makes it clear that it is intended to apply to transfers of interests amongst existing concert group members.
- 34. Acting in concert is defined under the Takeovers Code to mean  
*“persons acting in concert comprise persons who, pursuant to an agreement or understanding (whether formal or informal), actively cooperate to obtain or consolidate control of a company through the acquisition by any of them of voting rights of the company.”*
- 35. China Baowu argued extensively that it and Anhui SASAC are either actually acting in concert or should be presumed to be acting in concert for the reasons described above, while accepting that not all levels of SASAC should automatically be regarded as acting in concert.
- 36. It is accepted that different levels of SASAC should not be automatically considered to be acting in concert (see paragraphs 15 and 26).
- 37. We do not agree that China Baowu and Anhui SASAC are parties acting in concert for the following reasons:
  - (A) The principal technical arguments that China Baowu and Anhui SASAC should be presumed to be acting in concert in accordance with the Takeovers Code rely on future events that would only occur following the completion of the Proposed Transfer (see paragraph 15). This approach is clearly contrary to the requirements of Note 6(a) to Rule 26.1 which applies to situations involving transfers of interests amongst members of

an existing concert group.

- (B) Nothing has been provided to show that China Baowu and Anhui SASAC had been actively cooperating to obtain or consolidate control of the Company at any relevant time prior to the Proposed Transfer.
- (C) The argument that Central SASAC and Anhui SASAC are acting in concert in the current unique circumstances when the interests would be transferred at nil consideration and in compliance with PRC laws also relies on a future act that would only occur upon completion of the Proposed Transfer and, in any event, does not in itself establish that the parties had been acting in concert prior to the Proposed Transfer.
- (D) The historical relationship between Magang Group and China Baowu, which had ceased to exist since 2001, adds no weight to the argument that China Baowu and Anhui SASAC are, in-fact, parties acting in concert at the current time.

38. We also considered carefully the three factors that must be considered before a waiver may be granted under Note 6(a) to Rule 26.1.

- (i) *whether the leader of the group or the largest individual shareholding has changed and whether the balance between the shareholdings in the group has changed significantly*

The Proposed Transfer does not satisfy this factor because China Baowu would become the new leader (i.e. even if we assume that there is in fact a concert group in existence) and there would be a fundamental change in the balance of the shareholding because Anhui SASAC would cease to be the owner of the entire equity of Magang Group and cede control to China Baowu.

- (ii) *the price paid for the shares acquired*

The price being paid for a transfer would typically be relevant in determining whether control is being transferred and hence an important factor to consider in the context of Note 6(a).

As submitted by China Baowu, the Proposed Transfer is being done at nil consideration in view of the State Policy. China Baowu admitted that the Proposed Transfer would likely enable the enlarged and consolidated China Baowu group to achieve steel production capacity of at least 80 million tonnes and qualify as a large-scale iron and steel conglomerate under the State Policy.

In a typical commercial transaction, the value of the transfer would indicate whether a control premium is being paid. In the case of the Proposed Transfer, the fact that it is being done for a non-commercial purpose would negate the importance of price as a factor in determining whether a control premium is being paid, because here the transfer is being done in pursuit of a non-commercial purpose.

- (iii) *the relationship between the persons acting in concert and how long they have been acting in concert*

Nothing has been provided to demonstrate that China Baowu and Anhui

SASAC had been acting in concert at any relevant time prior to the Proposed Transfer. As such, this factor has not been met either.

39. We note the following statements set out in paragraph 26 of the Haeco Case:

*“Under Note 6(a) to the Notes to Rule 26.1, the Code envisages that acquisitions by one member of a concert party from another which cause the purchaser’s shareholding to cross a trigger point in the Code will “normally” result in a mandatory takeover offer obligation arising. This must be the starting point; waivers are a concession which are granted only in a comparatively narrow range of circumstances.”*

These statements clearly summarize the underlying spirit of Note 6(a) to Rule 26.1 of the Takeovers Code.

40. Under these circumstances, we do not agree that Note 6(a) to Rule 26.1 would be applicable.

41. China Baowu also argued that the Waiver may be granted under section 2.1 of the Introduction to the Codes. Section 2.1 of the Introduction to the Codes would allow the Waiver to be granted if the strict application of Rule 26.1 to the Proposed Transfer would otherwise operate in an *“unnecessarily restrictive or unduly burdensome or otherwise inappropriate, manner”*.

42. Section 2.1 of the Introduction to the Codes also provides that *“Although the Rules are expressed in more detailed language than the General Principles, they, like the General Principles, are to be interpreted to achieve their underlying purposes.”*

43. Rule 26.1 lies at the heart of the Takeovers Code and provides that a general offer will be required when a person acquires control of a company, unless a waiver is granted. This is clearly in furtherance of General Principle 2 of the Codes, which provides that a general offer to all the other shareholders would normally be required following a change in control.

44. There is no doubt that the Proposed Transfer is being done so that China Baowu would obtain control of Magang Group and, indirectly, the Company, so as to allow China Baowu to consolidate the steel production capacity of Magang Group and the Company.

45. China Baowu also argued that the 2007-2008 cases should be followed and the Waiver should be granted. The Panel did not meet to consider the 2007-2008 cases and detailed facts of them were not provided. In any event, we agree with the Executive that the principle laid down in the Haeco Case means that the 2007-2008 cases are no longer good precedents.

46. For the reasons discussed above, we see no reasons that the application of Rule 26.1 in the current situation would result in its application in an unnecessarily restrictive or unduly burdensome or otherwise inappropriate, manner.

47. Therefore, a waiver from the mandatory general obligation that would be triggered upon completion of the Proposed Transfer will not be granted.

48. On the question of the applicable offer price, we agree that the VWAP of the H shares of the Company on the last trading day prior to the Rule 3.7 Announcement should be used.

49. This price represents the latest available VWAP of the H shares of the Company that is free from any impact that may have been brought about by the possibility of a general offer resulting from the Proposed Transfer.
50. Finally, the Panel was also asked to consider delaying the publication of its decision by one month. As set out in section 16.1 of the Introduction to the Codes, irrespective of the outcome of a matter, it is the policy of the Panel to publish its decisions as soon as reasonably practicable, so that their activities may be understood by the public. In normal circumstances, publication would follow within about two weeks of a hearing. In the present case, in order to give China Baowu time to consider this decision and whether, and if so, how it may wish to proceed with the Proposed Transfer, it was agreed that this decision will be published no earlier than the expiry of one month from the day of the hearing.

19 July, 2019

Parties present at the hearing:

The Takeovers Executive

China Baowu Steel Group Corporation Limited

Clifford Chance, Hong Kong legal advisers to China Baowu Steel Group Corporation Limited

King & Wood Mallesons, PRC legal advisers to China Baowu Steel Group Corporation Limited

China International Capital Corporation Limited, financial adviser to China Baowu Steel Group Corporation Limited

Linklaters, Hong Kong legal advisers to China International Capital Corporation Limited

Maanshan Iron & Steel Company Limited

Messrs. Chiu & Co., Hong Kong legal advisers to Maanshan Iron & Steel Company Limited

CLSA Limited, financial adviser to Maanshan Iron & Steel Company Limited