



Takeovers Bulletin

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- Reminder of ancillary documents requirements
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Public criticism of Gao Yunhong and Feng Xuelian for breaching the rules on frustrating action

On 7 April 2022, we publicly criticised Gao Yunhong and Feng Xuelian for breaching the no frustrating action rules under the Takeovers Code.

An offer period commenced for Steering Holdings Limited on 13 May 2021 when an announcement was published by Mastervoyor Holdings Limited. Between 27 May 2021 and 1 June 2021, a wholly-owned subsidiary of Steering disposed of certain listed securities held by it. Given that the disposals when aggregated were a discloseable transaction under the Listing Rules carried out during an offer period, they constituted a frustrating action which was subject to the requirements of the Takeovers Code.

The approval of Steering's shareholders was not obtained nor was a waiver of the requirement to obtain shareholders' approval sought from the Executive. This was a clear breach of the Takeovers Code requirements.

Gao and Feng, the two directors of Steering who were substantially involved in the disposals, accepted that they breached the Takeovers Code and agreed to the disciplinary action against them. They admitted that the breaches arose as a result of their oversight and misunderstanding of the Takeovers Code requirements.

A copy of the [Executive Statement](#) dated 7 April 2022 can be found in the "[Regulatory Functions - Corporates – Takeovers and mergers – Decisions and statements – Executive decisions and statements](#)" section of the SFC website.

Practitioners and parties who wish to take advantage of the securities markets in Hong Kong are reminded that they should conduct themselves in accordance with the Codes on Takeovers and Mergers and Share Buy-backs (the Codes). This includes seeking professional advice as needed. Professional advisers should ensure that their clients understand and abide by the Codes. If there is any doubt about the application of the Codes, the Executive should be consulted at the earliest opportunity.

Reminder of ancillary documents requirements

Rule 12.1 requires that all documents subject to the Codes (other than those on the Post-Vet List) must be filed with the Executive for comment prior to release or publication and must not be released or published until the Executive has confirmed that it has no further comments. Under the Codes, the definition of "document" includes any announcement, advertisement or document issued by any party to an offer or possible offer in connection with the offer or possible offer. For this purpose, parties to an offer or possible offer include all offerors, the offeree company, shareholders of an offeror or the offeree company and any persons acting in concert with any of them.

As mentioned in the *Takeovers Bulletin (Issue No.23)*, we recognise that, as part of a Code transaction, parties to an offer may have to issue ancillary documents other than documents issued under the Codes for the purpose of complying with other regulatory requirements. Ancillary documents should not include any new information relating to the Code transaction that has not already been published in accordance with the Codes. Given this, a pragmatic approach towards ancillary documents was provided as follows:

- (i) If the relevant parties confirm to the Executive that the ancillary documents do not contain any material new information with Code implications, the Executive will not require such documents to be submitted for comment in accordance with Rule 12.1. In these circumstances, the Executive will not normally require a responsibility statement under Rule 9.3 of the Takeovers Code to be included in these ancillary documents.
- (ii) If, however, the ancillary documents contain material new information with Code implications, the parties should highlight the relevant pages that contain the new information and submit them to the Executive for its comment. If the new information is sufficiently material, the Executive may consider it necessary to comment on the entire document. The Executive may also require a responsibility statement under Rule 9.3 of the Takeovers Code to be included in the relevant ancillary document.

To avoid unnecessary delays, parties and their advisers should consult the Executive at an early stage if an ancillary document is to be published.

Recently, there has been an increasing number of instances where parties to an offer or their shareholders released or published ancillary documents in connection with an offer without confirming to us that the ancillary documents did not contain any material new information with Code implications as stated above or consulting us prior to the release or publication. The parties and their advisers were not aware of these requirements and only confirmed to us that the ancillary documents did not contain any material new information with Code implications after we made enquiries with them.

We wish to remind parties to an offer and their advisers of the requirements applicable to ancillary documents as set out above. We also provide further guidance below on the "no material new information" confirmations for ancillary documents to be provided to the Executive:

1. The confirmation should normally be given by the financial adviser to the relevant party issuing the ancillary document; and

2. The confirmation should be made in writing and submitted to the Executive by not later than the close of business on the business day following the release or publication of the ancillary document.

When in doubt, the Executive should be consulted.

Compliance with Rule 19.1 for closing announcements involving trading suspensions due to insufficient public float

Under Note (1) to Rule 8.08 of the Listing Rules, the Stock Exchange will normally require suspension of trading in an issuer's securities where the percentage of its public float falls below 15%, or 10% if the issuer has been granted a public float waiver under Rule 8.08(1)(d) at the time of listing.

Where the public float of an offeree company falls below the prescribed percentage when the offer closes and as a result a trading suspension is required, it is a common practice for the parties to disclose this information in closing announcements made under Rule 19.1 of the Takeovers Code. However, we have noted an increasing number of instances where these closing announcements were published after the 7:00 p.m. deadline required under Rule 19.1. The delay was often due to the additional time required to prepare the disclosure relating to the trading suspension.

Rule 19.1 of the Takeovers Code, which is an expansion of General Principle 6 to make full and prompt disclosure to avoid the creation of a false market, provides that:

"By 6:00 p.m. (or such later time as the Executive may in exceptional circumstances permit) on a closing date the offeror must inform the

Executive and the Stock Exchange of its decision in relation to the revision, extension, expiry or unconditionality of the offer. The offeror must publish an announcement in accordance with the requirements of the Listing Rules by 7:00 p.m. on the closing date stating whether the offer has been revised or extended, has expired or has become or been declared unconditional (and, in such case, whether as to acceptances or in all respects). A draft of such announcement must be submitted to the Executive by 6:00 p.m. for comment."

Rule 19.2 further provides that:

"The Executive should be consulted if an offeror is unable to comply with any of the requirements of this Rule 19. The Executive may require that acceptors be granted a right of withdrawal, on terms acceptable to the Executive, until the requirements of this Rule 19 can be met."

It is important that the relevant timings under the Codes are observed to ensure an orderly market is maintained during a Code-related transaction, as well as when it is about to complete. The market has long adapted to the timing requirements under the Codes, and parties and practitioners are able to comply without difficulty.

If parties encounter or anticipate any difficulties in meeting the 7:00 p.m. publication deadline for closing announcements as a result of also being required to announce a trading suspension of the offeree company's shares after the close of an offer, they should consider splitting the results of the offer and the trading suspension into two separate announcements so that the offeror would be in a better position to meet its obligations under Rule 19.1.

If in doubt, the Executive should be consulted at the earliest opportunity.

Asia Pacific Takeovers Regulators Virtual Conference 2022

In June 2022, we co-hosted the Asia Pacific Takeovers Regulators Virtual Conference with the Securities Commission Malaysia. This is the seventh time, and the first since the pandemic started, that Asia Pacific takeovers regulators met to discuss recent developments and experience in regulating takeovers activities.

More than 50 participants from Australia, Bangladesh, Cambodia, Hong Kong, Laos, Malaysia, New Zealand, the Philippines, Singapore, South Africa and Thailand attended the meeting. Matters discussed included managing takeovers activities during the pandemic, concert party relationships, shareholder activism, approaches to frustration of offers and lessons learnt from takeovers breaches.

The conference provided a good opportunity for the regulators to discuss the similar issues they face and share their experience. Despite different rules and systems, members can learn a lot from one another. This helps protect the public in takeovers activities in the Asia Pacific region.

Quarterly update on the activities of the Takeovers Team

In the three months ended 31 March 2022, we received 15 takeovers-related cases (including privatisations, voluntary and mandatory general offers and off-market and general-offer share buy-backs), two whitewashes and 49 ruling applications.

Useful links

- The Codes on Takeovers and Mergers and Share Buy-backs
- Practice notes
- Decisions and statements
- Previous *Takeovers Bulletins*

All issues of the *Takeovers Bulletin* are available under 'Published resources – Newsletters – Takeovers Bulletin' on the SFC website at www.sfc.hk.

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Securities and Futures Commission
54/F, One Island East,
18 Westlands Road,
Quarry Bay, Hong Kong

(852) 2231 1222
enquiry@sfc.hk
www.sfc.hk