

TAKEOVERS AND MERGERS PANEL

Panel Decision

In relation to a referral by the Takeovers Executive to the Takeovers and Mergers Panel (the "Panel") for a ruling on the appropriate offer price for the mandatory general offer under Rule 26.1 of the Takeovers Code for Suncity Group Holdings Limited (now known as LET Group Holdings Limited)

PURPOSE OF THE HEARING

1. The Panel met on 11 August 2022 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 particularly novel, important or difficult points at issue.
2. The Panel was asked to consider the following:

What is the appropriate offer price for the mandatory general offer under Rule 26.1 of the Takeovers Code triggered as a result of the completion of the SPAs (as defined in paragraph 22 below) which involved the acquisition of, among others, 4,991,643,335 shares ("**Suncity Sale Shares**") in Suncity Group Holdings Limited (now known as LET Group Holdings Limited) ("**Suncity**").

KEY PARTIES

The Company

3. Suncity is a company incorporated in the Cayman Islands, the shares of which ("**Suncity Shares**") are listed on the Main Board of The Stock Exchange of Hong Kong Limited (stock code: 1383).
4. As at 31 July 2022, Suncity had a total of 6,667,972,746 shares in issue and 206,500,187 outstanding share options carrying rights to subscribe for 206,500,187 Suncity Shares.
5. Suncity mainly conducts its business through five segments: (i) the development and sales of office premises, residential and retail properties; (ii) leasing of retail residential properties and provision of property management services; (iii) provision of hotel and integrated resort general consultancy services; (iv) sales of travel related products and

provision of travel agency services; and (v) provision of property management services and transportation services in the Philippines.

The Borrower and Mr. Chau

6. Star Soul Investments Limited (the “**Borrower**”) is a company wholly-owned by Mr. Chau Cheok Wa (“**Mr. Chau**”), who was the chairman of the board and an executive director of Suncity until his resignation from such positions with effect from 1 December 2021.

Lenders

7. AG Capital Limited, Sun Hung Kai Structured Finance Limited and Mr. Lee Seng Hui (together, the “**Lenders**”), are the lenders of a HK\$300 million loan facility (the “**Loan**”) to the Borrower under the Facility Agreement (as defined in paragraph 14 below). Mr. Lee Seng Hui is the chief executive and an executive director of Allied Group Limited (stock code: 373) (“**Allied Group**”) and he is one of the trustees of the Lee and Lee Trust that controls approximately 74.96% of Allied Group. AG Capital Limited is a wholly-owned subsidiary of Allied Group. Sun Hung Kai Structured Finance Limited is a wholly-owned subsidiary of Sun Hung Kai & Co. Limited (stock code: 86) (“**SHK**”). Allied Group owns approximately 73.08% of SHK.

Key providers of security for the Loan

8. Fame Select Limited (“**Fame Select**”) is a company owned as to 50% by Mr. Chau and 50% by Mr. Cheng Ting Kong (“**Mr. Cheng**”). Fame Select was the beneficial owner of the Suncity Sale Shares (representing approximately 74.86% of the issued share capital of Suncity) and the zero coupon convertible bonds in the aggregate principal amount of HK\$402 million due in 2022 issued by Suncity (the “**Fame Select CB**”), prior to the completion of the SPAs (as defined in paragraph 22 below).
9. Star Hope Limited (“**Star Hope**”) is a company wholly-owned by Mr. Chau. Star Hope was the beneficial owner of (i) the zero coupon convertible bonds in the aggregate principal amount of HK\$177 million due in 2022 issued by Suncity (the “**Star Hope CB**”); (ii) promissory notes in the principal amount of HK\$303 million, interest bearing at 2% per annum, owed by Suncity (the “**PN Loan**”); and (iii) perpetual securities in the aggregate principal amount of HK\$5,408 million, interest bearing at 5% per annum, issued by Suncity to Star Hope as subscriber (the “**Perpetual Securities**”), in each case prior to the completion of the SPAs (as defined in paragraph 22 below).
10. Better Linkage Limited (“**Better Linkage**”) is a company wholly-owned by Mr. Lo Kai Bong (“**Mr. Lo**”). Better Linkage was the beneficial owner of the zero coupon convertible bonds in the aggregate principal amount of HK\$120 million due in 2022 issued by Suncity (the “**Better Linkage CB**”) and Mr. Lo (directly and indirectly) was interested in 7,000,000 Suncity Shares, prior to the completion of the SPAs (as defined in paragraph 22 below). Mr. Lo is an executive director of Suncity.

Agent and Security Agent

11. Wooco Secretarial Services Limited (“**Wooco**”) is the agent and the security agent under the Facility Agreement (as defined in paragraph 14 below). As the agent and the security agent, Wooco held the various securities charged to secure repayment of the Loan on

trust for the Lenders and was authorised to exercise certain rights and powers delegated to it in relation to, among others, the enforcement of the securities, under the Facility Agreement. The Facility Agreement provided that the relationship between Wooco and the Lenders is that of agent and principal only and the duties under the terms of the Facility Agreement and the related security documents were solely mechanical and administrative in nature. Wooco holds a Trust or Company Service Provider Licence.

Offeror and Champion Trade

12. Mr. Lo is the ultimate beneficial owner of Major Success Group Limited (“**Major Success**”) and Champion Trade Group Limited (“**Champion Trade**”). As further described in paragraphs 21 and 22 below, the Lenders assigned to Champion Trade the Loan and the full benefits and rights under all the security documents that created the security for the Loan and Major Success became interested in the Suncity Sale Shares. Major Success is the Offeror.

Yu Ming

13. Yu Ming Investment Management Limited (“**Yu Ming**”) is the financial adviser to (i) the Lenders (in relation to the tender process for the various securities charged to secure repayment of the Loan); (ii) the Offeror in relation to the assignment of the Loan and securities charged; and (iii) the Offeror in relation to the Share Offer (as defined in paragraph 25 below). Yu Ming is a corporation licensed by the Securities and Futures Commission to conduct Types 1 (dealing in securities), 4 (advising on securities), 6 (advising on corporate finance) and 9 (asset management) regulated activities.

BACKGROUND AND FACTS

Facility Agreement

14. On 30 July 2021, the Borrower, the Lenders and Wooco entered into a facility agreement in relation to the Loan (“**Facility Agreement**”). The purpose of the Loan was for the general working capital of the Borrower. The interest rate for the initial two months from the drawdown date was 25.958441% per annum, and thereafter was 24% per annum. The repayment date was 30 December 2021, being five months from the drawdown date.
15. The securities charged or otherwise assigned to Wooco under the Facility Agreement to secure repayment of the Loan (the “**Securities**”) include, among others:
 - (i) the Perpetual Securities;
 - (ii) the Fame Select CB, the Star Hope CB and the Better Linkage CB (together, the “**CBs**”);
 - (iii) the PN Loan; and
 - (iv) the Suncity Sale Shares (together with (i), (ii) and (iii) above, the “**Suncity Securities**”).

16. Mr. Chau and Mr. Lo were guarantors under the Facility Agreement.

Event of Default

17. Suncity issued an announcement on 29 November 2021 which stated, among other things: (i) the approval of arrest (批准逮捕) of Mr. Chau by the People's Procuratorate of Wenzhou City (溫州市人民檢察院) on 26 November 2021; and (ii) the arrest and detainment of Mr. Chau by the Macau Judicial Police where it was alleged that Mr. Chau has been involved in illegal gaming and money laundering (collectively, the "**Incident**"). Mr. Chau resigned as the Chairman and Executive Director of Suncity with effect from 1 December 2021.
18. On 8 December 2021, P. C. Woo & Co., on behalf of the Lenders and Wooco, issued a letter to the Borrower stating that "*[t]he Incident constitutes a breach of Clause 10 (Representations and Warranties) of the Facility Agreement... which also constitutes an Event of Default pursuant to Clause 14.1.4 of the Facility Agreement. The Incident further constitutes an Event of Default pursuant to Clause 14.1.18 of the Facility Agreement.*" P.C. Woo & Co. demanded immediate repayment of the Loan together with all interest accrued under the Facility Agreement within 5 business days from the date of the letter. This letter was copied to Mr. Lo.
19. On 16 December 2021, P. C. Woo & Co. issued another letter to the Borrower stating that as the indebtedness had not been repaid, "*the Lenders shall have no alternative but to enforce the securities under the Security Documents.*" This letter was copied to Mr. Lo, Mr. Cheng, Fame Select, Star Hope and Better Linkage.

Enforcement of security interests

Tender process

20. Based on Yu Ming' submission dated 25 May 2022:
- (A) After the default in December 2021, the Lenders sought professional advice from Yu Ming about the possible actions for the recovery of the Loan. Yu Ming advised the Lenders to seek professional investors' interest in the Securities by issuing invitations to licensed corporations in Hong Kong.
- (B) In mid-December 2021, the Lenders asked Yu Ming to standby for a tender process and Yu Ming began working on the tender documentation.
- (C) In February 2022, Yu Ming produced a draft invitation for expression of interest for the Lender's consideration ("**IEOI**"). However the Lenders were hesitant to commence the process in view of the possible universal compulsory testing and citywide lockdown in connection with the COVID situation in Hong Kong at the time.
- (D) On or around 21 March 2022, the government of Hong Kong shelved the idea of universal compulsory testing and citywide lockdown, and Yu Ming revisited the IEOI with the Lenders.

- (E) On 1 April 2022, Yu Ming emailed 336 Type 6 licensed corporations with the IEOI. The IEOI contained detailed information on the Securities and was password protected. The password would only be provided separately to the licensed corporations upon their request. Five different intermediaries responded.
- (F) On 7 April 2022, one intermediary (Merdeka Corporate Finance Limited (“**Merdeka**”)) expressed a non-binding preliminary interest in the Securities on behalf of Mr. Lo. Mr. Lo signed a confidentiality agreement and was granted access to the virtual data room regarding the Securities.
- (G) On 21 April 2022, through Merdeka, Mr. Lo submitted a non-binding indicative offer, entitling him to view and comment on the draft sale and purchase documentation.
- (H) On 13 May 2022, Mr. Lo submitted a final offer through his legal adviser. Mr. Lo was the only party who made a bid and he was awarded the successful contender.

Agreements for sale and purchase and assignments and mandatory offers

21. On 13 May 2022, Champion Trade entered into a deed of assignment (“**Loan Assignment**”) with the Lenders and Wooco, whereby the Lenders assigned the Loan together with the full benefits and rights of the Securities (including the Suncity Securities) to Champion Trade at a consideration of HK\$344,383,562. This corresponded to the total amount outstanding under the Facility Agreement (comprising the principal amount of the Loan and interest as at 13 May 2022).
22. On the same date, two companies wholly owned by Mr. Lo, namely Champion Trade and the Offeror, entered into two agreements for sale and purchase and assignment (the “**SPAs**”). The first agreement (the “**SPA (Suncity Securities)**”) involved the acquisition by the Offeror of the Suncity Sale Shares and the CBs and the assignment to the Offeror of the Perpetual Securities and the PN Loan at a consideration of HK\$344,383,557. The second agreement (the “**SPA (Other Securities)**”) involved the acquisition by the Offeror of shares in Fame Select and Star Hope and the assignment to the Offeror of certain loans (the “**Other Securities**”) at a nominal consideration of HK\$5 (together with the consideration of HK\$344,383,557 under the SPA (Suncity Securities), the “**SPA Consideration**”). Completion of the SPAs took place on 13 May 2022.
23. On 12 May 2022 and 13 May 2022, respectively Mr. Lo obtained funding for an aggregate amount of HK\$344,383,562 by (i) a term loan of HK\$45 million extended by SHK Finance Limited, a fellow subsidiary of one of the Lenders, Sun Hung Kai Structured Finance Limited, which loan has a term of 12 months and is secured by certain other assets of Mr. Lo; and (ii) a margin loan facility of HK\$299,383,562 from Get Nice Securities Limited with a term of 6 months and all the Suncity Securities were either mortgaged or assigned to secure repayment of the margin loan.
24. The assignment of some of the Suncity Securities to Get Nice Securities Limited required the consent of Suncity. Suncity gave such consent.
25. Prior to completion of the SPAs, Mr. Lo (directly and indirectly) was interested in 7,000,000 Suncity Shares. Immediately following completion of the SPAs, the Offeror and parties acting in concert with it (including Mr. Lo) became interested in an aggregate

of 4,999,853,335 Suncity Shares, representing approximately 74.98% of Suncity. The Offeror is required to make (i) a share offer for all the issued Suncity Shares (other than those already owned or agreed to be acquired by the Offeror or parties acting in concert with it) pursuant to Rule 26.1 of the Takeovers Code (“**Share Offer**”); and (ii) an option offer for all outstanding share options of Suncity.

26. Trading in the Suncity Shares was halted on 13 May 2022. On 16 May 2022, Yu Ming submitted a draft announcement to the Executive for vetting (“**Draft 3.5 Announcement**”).

Offer price determination

27. It is not disputed that the Offeror had triggered a mandatory general offer for the Suncity Shares. The Offeror proposed to make the Share Offer at an offer price of HK\$0.0029 per Suncity Share in cash. It is stated in the Draft 3.5 Announcement that such offer price is the same as the price per Suncity Sale Share paid by the Offeror under the SPA (Suncity Securities).
28. In response to the Executive’s query as to how the offer price was determined, Yu Ming submitted that the Offeror allocated the SPA Consideration among the Securities on the basis of their respective face values. The relevant appendix is extracted below:

Securities	Holding interest in Securities %	Relative Value in Securities	Relative Value %	Allocation amount	
		HK\$	%	HK\$	
Suncity Shares	4,991,643,335 Suncity Shares	74.86%	HK\$279,532,027*	4.18%	HK\$14,390,578
Fame Select CB	HK\$402,000,000 zero coupon convertible bonds	100%	HK\$402,000,000	6.01%	HK\$20,695,348
Star Hope CB	HK\$177,000,000 zero coupon convertible bonds	100%	HK\$177,000,000	2.65%	HK\$9,112,131
Better Linkage CB	HK\$120,000,000 zero coupon convertible bonds	100%	HK\$120,000,000	1.79%	HK\$6,177,716
Promissory Note	Principal amount HK\$303,000,000	100%	HK\$303,000,000	4.53%	HK\$15,598,732
Perpetual Securities	HK\$5,408,000,000	100%	HK\$5,408,000,000	80.84%	HK\$278,409,053
Shareholders loan	Loans to Fame Select, Star Hope, Suncity	100%	N/A	0.0001%	HK\$5
Fame Select Sale Shares	130,000 issued share of Fame Select				
Star Hope Sale Shares	1 issued share of Star Hope				
Total			HK\$6,689,532,027	100%	HK\$344,383,562

Note: The relative value of Suncity is calculated based on the closing price of HK\$0.056 of Suncity as at the Last Trading Date multiplied by 4,991,643,335 Suncity Shares charged.

29. Essentially, the Offeror arrived at the offer price by allocating the SPA Consideration by the relative percentage value of the Suncity Sale Shares in the basket of Securities:

(A) Suncity Shares closed at HK\$0.056 on 12 May 2022 (the day prior to the initial trading suspension, “**Last Trading Day**”), therefore the 4,991,643,335 Suncity Sale Shares are valued at HK\$279,532,027. The other Suncity Securities are valued at their face values.

- (B) The sum of HK\$279,532,027 represented approximately 4.1786% of the aggregate amount of the market value of Suncity Sale Shares and the face value of all the other Suncity Securities.
- (C) Multiplying 4.1786% to the consideration of HK\$344,383,557 under the SPA (Suncity Securities) (i.e. HK\$344,383,562 - HK\$5) is equal to around HK\$14.39 million, which translates into approximately HK\$0.0029 per Suncity Sale Share.
30. The offer price of HK\$0.0029 proposed by Yu Ming represents a discount of approximately 94.82% to the closing price of HK\$0.056 on the Last Trading Day. It also represents a discount of approximately 99.60% to the audited consolidated net asset value of Suncity of approximately HK\$0.7239 per Suncity Share as at 31 December 2021.
31. The Executive expressed concern as to Yu Ming's methodology in determining the offer price for a transaction involving the acquisition of control and other securities. On 6 June 2022, the Executive indicated to Yu Ming that the Executive's preliminary view was that the offer price should be based on the entire consideration paid by the Offeror (being HK\$344,383,562), resulting in an offer price of HK\$0.0690 per Suncity Share, and the matter would be referred to the Panel if Yu Ming took a different view.
32. The offer price of HK\$0.0690 proposed by the Executive represents a premium of approximately 23.21% to the closing price of HK\$0.056 per Suncity Share on the Last Trading Day, a discount of approximately 57.7% to the closing price of HK\$0.163 on 10 August 2022, the trading day immediately before the date of the Panel hearing and a discount of approximately 90.47% to the audited consolidated net asset value of Suncity of approximately HK\$0.7239 per Suncity Share as at 31 December 2021.
33. On 30 June 2022, Yu Ming made a further submission to the Executive, essentially maintaining the view that the Share Offer should be made at an offer price of HK\$0.0029 per Suncity Share ("**30 June 2022 Submission**").
34. On 7 July 2022, trading in the shares of Suncity resumed after an announcement stating that, among other things, the Offeror had triggered a mandatory general offer for Suncity Shares on 13 May 2022, with the offer price to be determined pending the outcome of the Panel hearing.

YU MING'S CASE

35. Yu Ming's allocation of the SPA Consideration to the Suncity Sale Shares, which is described in paragraphs 28 and 29 above, is in essence a pro-rata allocation based on the market price of the Suncity Shares and the face value of the other Suncity Securities (the "**Allocation Option**").
36. Yu Ming considered that by paying the SPA Consideration, the Offeror acquired distinct assets – the Perpetual Securities, the CBs, the PN Loan and the Suncity Sale Shares. Yu Ming took the view that "*spreading the consideration of the purchase of the Securities prorated to their total face value was the only sensible allocation. Any other method would be subjective, unreliable and depends on a myriad of assumptions used in complicating an otherwise simple see-through calculation*".
37. The SPA (Suncity Securities) explicitly stated the purchase price of each of the Suncity

Sale Shares and the other Suncity Securities, and the allocation was based on their pro-rata specific values, the only fair basis so objective that diverging from which would be arbitrary and dangerously subjective.

38. The Perpetual Securities, the CBs and the PN Loan were issued to different beneficial owners – Mr. Chau, Mr. Cheng and Mr. Lo himself. For instance, the Star Hope CB was held beneficially and wholly by Mr. Chau, the Fame Select CB was held beneficially and equally by Mr. Chau and Mr. Cheng, and the Better Linkage CB is held beneficially and wholly by Mr. Lo.
39. The Perpetual Securities, the CBs and the PN Loan are unsecured obligations of Suncity (the “**Unsecured Obligations**”) which rank ahead of Suncity Shares on the claim of assets of Suncity. The CBs and the PN Loan will be due for repayment during the course of 2022 (with the first due date being 28 August 2022). In the event of default of the Unsecured Obligations, the Unsecured Obligations have priority in claim over Suncity Shares and are expected to have substantial residual value of HK\$5.1 billion. Such residual value is calculated by applying a recovery ratio of 80% of the aggregate face values of the Unsecured Obligations of HK\$6.4 billion and the recovery ratio is calculated based on total assets of HK\$5.4 billion divided by total liabilities of HK\$6.7 billion of Suncity at company level. Shareholders of Suncity would, however, have nil residual value and the Suncity Shares would face a delisting. Therefore, Yu Ming argued that Suncity Shares have no real value.
40. Yu Ming also mentioned that the deficit in Suncity’s net assets could be even greater in the event of a forced sale of Suncity’s assets, taking into account the COVID-19 epidemic and the global travel situation. Yu Ming concluded that allowing the Offeror to proceed with an offer at an offer price of HK\$0.0029 per Suncity Share represents not only a fair allocation of the SPA Consideration, but also serves the best interests of Suncity shareholders.
41. Yu Ming confirmed that the Offeror had not commissioned a valuation of the Securities for the purpose of the Loan Assignment and the SPAs as Mr. Lo was knowledgeable about the Securities. However, the Lenders engaged BDO Financial Services Limited (“**BDO**”) to value the Suncity Securities although no formal report was issued. Yu Ming sought the permission of the Lenders and provided the Panel with a valuation of the Suncity Securities as at 31 December 2021, which was signed off by BDO (the “**Valuation**”). The Valuation adopted different valuation methodologies from the face value of the Unsecured Obligations and Yu Ming did not comment on such methodologies. The Valuation was provided to the Panel merely to illustrate that the Unsecured Obligations have significant, not zero, value.
42. Yu Ming submitted that the Executive’s approach in using 100% of the SPA Consideration to determine the offer price is “*misconceived and in violation of the Wednesbury principle*”. It was contended that, under the Wednesbury principle, in exercising discretion entrusted to it, the Executive must consider relevant factors, such as the significant and specific value of each of the Unsecured Obligations and the Suncity Sale Shares, the priority ranking of the Unsecured Obligations over Suncity Shares, and the fact that they were held by different beneficial owners.
43. Yu Ming considered that the Executive’s approach “*has no intelligible basis other than to forcibly extract a higher [offer price]*”. The Unsecured Obligations alone amounted to

HK\$6.4 billion, and if the Executive's approach were to be adopted, it would obliterate such value entirely, and would be manifestly unacceptable. Yu Ming submitted that Senior Counsel advising Mr. Lo, Hectar Pun SC, has advised that if the Executive were to refuse to acknowledge the value of the Unsecured Obligations, such decision is irrational in the public law sense. Written advice of Hectar Pun SC was not provided to the Panel or the Executive.

44. In addressing the Executive's concern that the Allocation Option has a danger of hiding (whether intentionally or unintentionally) any control premium paid by the Offeror when a controlling interest in Suncity is acquired, Yu Ming submitted that as the financial adviser closely involved in the initiation of tender process since December 2021 and later in the Share Offer since May 2022, it saw no premium manipulation and would affirm the same if it were called to testify in any proceedings. Furthermore, the wide outreach to 336 type 6 licensed corporations in the tender process in April 2022 is evidence that Yu Ming and the Lenders aimed to maximize the price of the disposal of the Securities, which also unintentionally minimized the risk of control premium manipulation.
45. In addressing the Executive's concern that, if the Allocation Option was accepted, the Offeror would have "complete discretion" as to how to allocate the SPA Consideration which could open the way for future transaction structures, Yu Ming denied this and claimed that the Allocation Option was based on a straightforward and objective computation and allocation. If the Offeror had exercised "complete discretion", the offer price would have been set as HK\$0.00000001 per Suncity Share instead.
46. Yu Ming disagreed with the assertion of the Executive that the acquisition of the Unsecured Obligations constitutes a special deal under Rule 25 of the Takeovers Code.

Rule 25 of the Takeovers Code prescribes that:-

"Except with the consent of the Executive, neither the offeror nor any person acting in concert with it may make any arrangements with shareholders or enter into arrangements to purchase or sell securities of the offeree company, or which involve acceptance of an offer, either during an offer or when an offer is reasonably in contemplation or for 6 months after the close of such offer if such arrangements have favourable conditions which are not to be extended to all shareholders." (Emphasis added)

Note 5 to Rule 25 of the Takeovers Code further prescribes that:-

"A repayment to a shareholder of indebtedness due by the offeree company, or an assignment by a shareholder to the offeror or a person acting in concert with the offeror of a debt due from the offeree company, may be considered as a special deal under this Rule 25. The Executive would normally consent to such repayment or assignment if it is an arms length transaction on normal commercial terms, subject to compliance with all the requirements under Note 4 to Rule 25."

47. Yu Ming argued that the prerequisite of a special deal is "favourable conditions" towards certain shareholder(s) but not all. The Unsecured Obligations have priority over Suncity Shares in claims of Suncity's assets. It is clear that the Unsecured Obligations have substantial value. According to Yu Ming, the Unsecured Obligations creditors can expect a recovery of about 80%, compared to the SPA Consideration of about 5% of the face value of the Unsecured Obligations (SPA Consideration of HK\$344,383,562 divided by

the face value of Unsecured Obligations of HK\$6.4 billion). As such, the disposal of the Unsecured Obligations at a steep 95% discount to their face value are “unfavourable conditions” to the detriment of Mr. Chau and Mr. Cheng.

48. More importantly, Mr. Chau has been detained in custody since 27 November 2021 and was not involved in any negotiation or execution of the Loan Assignment and the SPAs. As it turned out, the failure to make himself available for the negotiation victimized him, causing him to suffer significant loss in value of the Unsecured Obligations. Furthermore, the transfer of the Suncity Shares and the other Suncity Securities was triggered by the default of the Loan, caused by Mr. Chau’s arrest, which was beyond the control or anticipation of all parties involved and the Executive should not equate the Loan Assignment and the transfer of the Suncity Sale Shares and the other Suncity Securities and Mr. Chau’s absence in the negotiation with a special deal that is supposedly formulated by the controlling shareholder for its own extra benefit.
49. In the Panel Paper, the Executive quoted a few market precedents to illustrate that the Executive has in the past required the benefit of the total amount paid by the Offeror to the exiting shareholder to be applied in determining the appropriate offer price in a mandatory general offer and also one precedent transaction falling under Note 5 to Rule 25 of the Takeovers Code. Yu Ming argued that there are distinct factual differences between the quoted precedents and the current case and as such concluded that there was no special deal.
50. Yu Ming submitted that the Loan and the subsequent Loan Assignment and transfer of Securities were not structured in a manner to circumvent the Takeovers Code nor designed to shift control from Mr. Chau to Mr. Lo. Yu Ming’s key reasons include:-
 - (A) The Lenders and the Borrower are independent third parties. The Loan was structured in July 2021 and the Facility Agreement was entered into after arms’ length negotiation on 30 July 2021, four months before the arrest of Mr. Chau. No one had any prior knowledge of his arrest and, to further illustrate the genuineness of the Loan, Yu Ming provided evidence to prove that interest on the Loan was punctually paid prior to the arrest of Mr. Chau.
 - (B) The disposal of the Securities by the Lenders was conducted through a highly transparent tender process and invitation for an expression of interest was sent to 336 type 6 licensed corporations. Yu Ming received expressions of interest from five different intermediaries and Mr. Lo was the only bidder.
 - (C) Yu Ming did not dispute that Mr. Chau and Mr. Lo had a close relationship until Mr. Chau’s arrest. However, Mr. Lo considered his relationship completely severed upon Mr. Chau’s arrest and that he would not have pledged the Better Linkage CB nor guaranteed the Loan had he known or foreseen Mr. Chau’s arrest.
 - (D) Upon completion of the Loan Assignment and the SPAs, Mr. Chau still owed Mr. Lo HK\$16.8 million of default interest and therefore Mr. Lo and Mr. Chau are on different sides.
51. At the Panel hearing, Yu Ming asked the Panel to consider two hypothetical situations and whether the Panel would rule that the entire loan amount would be used for the purpose of determining the offer price in each situation. The first situation is where

instead of the Unsecured Obligations, a substantial real estate asset is pledged and the value of the real estate asset is substantially higher than the amount of the Loan. The second situation is where the loan amount is substantially higher than the market capitalisation of an offeree company.

THE EXECUTIVE'S CASE

52. The Executive considered that the current case requires a careful balancing between: (a) the interest of the Offeror and its commercial freedom to allocate the SPA Consideration to the Suncity Sale Shares; (b) the principles underlying the requirements relating to special deals under Rule 25 of the Takeovers Code; and (c) the interests of minority shareholders.
53. The Executive considered that there are three possible ways to determine the offer price in this case. These are:
 - (1) the Allocation Option as described in paragraphs 28 and 29 above
 - (2) The market price of Suncity Shares (the "**Market Price Option**")
 - (3) Total SPA Consideration paid by the Offeror under the SPAs as described in paragraph 62 below (the "**Total Consideration Option**")

(1) Allocation Option

54. While the Allocation Option is seemingly a see-through calculation of the total consideration, it may be over-simplistic in allocating the value of the consideration paid by the Offeror to the basket of secured assets, and may potentially be misleading in relation to the actual consideration paid by the Offeror for obtaining control of Suncity.
55. The Executive had reservations regarding the methodology of the allocation of the SPA Consideration as proposed by Yu Ming. In its 30 June 2022 Submission Yu Ming referenced Suncity facing possible financial difficulties and that it may require some form of debt restructuring and/or fund raising exercise. The Executive submitted that the Allocation Option, by notionally comparing the market value of the Suncity Sale Shares with the principal amount outstanding under the Unsecured Obligations, is inherently flawed as the face value of the Unsecured Obligations does not reflect any possible discount to their value due to the circumstances of Suncity in contrast to the market trading price of the Suncity Shares. This would naturally mean that the Allocation Option would inherently allocate a lesser price to the Suncity Sale Shares.
56. The Executive was also particularly concerned that if it was simply to accept the approach that the Offeror has complete discretion as to how to allocate the SPA Consideration, this would open the way for future transaction structures to fail to reflect the control premium whenever a controlling interest in a listed company is sold together with other assets, which premium should otherwise be taken into account when calculating the offer price to be offered to minority shareholders. This is inconsistent with General Principle 1 in that all shareholders should be treated even-handedly and all shareholders of the same class should be treated similarly.
57. Yu Ming submitted that the Lenders under the Facility Agreement did not take control of

the voting rights of Suncity Shares from Fame Select after the entering into of the Facility Agreement.

58. Fame Select is an investment holding company which is owned by Mr. Chau and Mr. Cheng in equal share. Star Hope and Better Linkage are investment holding companies which are wholly-owned by Mr. Chau and Mr. Lo, respectively. As they are only investment holding companies, the Executive would see through them and consider that the acquisition of the Securities (other than Suncity Sale Shares) as arrangements between the Offeror (or its concert party), Mr. Chau and Mr. Cheng and constitute special deals under Rule 25 of the Takeovers Code. As a starting point, special deals are not generally permitted unless the Executive provides the requisite consent. By completing the SPAs on 13 May 2022, the Offeror has not only triggered a mandatory general offer, but has also breached Rule 25 of the Takeovers Code by completing special deals without the Executive's prior consent. The Allocation Option would fail to extend the benefit from these special deals to the other shareholders of Suncity under the mandatory general offer.
59. From the Executive's perspective, while the Codes are not concerned with the financial or commercial advantages or disadvantages of a transaction, the Executive will step in when it believes a transaction is being structured in a manner to circumvent mechanisms within the Codes to protect minority shareholders, such as the requirements relating to special deals under Rule 25 or if the transaction is otherwise inconsistent with the General Principles.

(2) Market Price Option

60. The second option which the Executive considered is to apply the market price of Suncity Shares as the offer price.
61. The Executive submitted that this option is only appropriate for cases where no consideration had been paid by the offerors. In those cases, there would not be a situation where certain shareholders could have received a higher consideration than other shareholders for the shares in question. There are also no concerns as to any control premium being paid as there is none. Therefore, the Executive did not consider the Market Price Option to be appropriate in the current case, given that clear consideration has been paid by Mr. Lo.

(3) Total Consideration Option¹

62. Under the Total Consideration Option, the offer price per Suncity Share is determined by dividing the entire SPA Consideration (i.e. HK\$344,383,562) by the number of Suncity Sale Shares (i.e. 4,991,643,335), resulting in HK\$0.0690 per Suncity Share. The Executive considered such option to be based on General Principle 1, requiring fair treatment of all shareholders, as well as addressing considerations under Rule 25 of the Takeovers Code.

¹ The "Total Consideration Option" is referred to in the Panel paper as the "Aggregation Option".

General Principle 1 and the Executive's practice

63. General Principle 1 states:

"All shareholders are to be treated even-handedly and all shareholders of the same class are to be treated similarly."

64. Following General Principle 1, the Executive normally requires the benefit of the total amount paid by the Offeror to the exiting shareholder to be applied in determining the appropriate offer price in a mandatory general offer. The Executive referred to three market precedents, namely the chain principle offer for HNA Technology Investments Holding Limited (stock code: 2086), the chain principle offer for i-Cable Communications Limited (stock code: 1097) and the unconditional mandatory general offer for BEP International Holdings Limited (stock code: 2326). In each of these three cases, no less than the total consideration paid by the respective offeror was used in determining the offer price.

Rule 25 and Special Deals

65. Rule 25 prohibits an offeror or persons acting in concert with it from entering into "any arrangement with a shareholder" during an offer "if such arrangements have favourable conditions which are not to be extended to all shareholders". This is consistent with the underlying purpose of Rule 25 in achieving General Principle 1 and ensures, among other things, equal treatment of shareholders. For certain special deals, the Executive's consent can be obtained subject to the procedural safeguards provided by the Notes to Rule 25 (i.e. majority vote by independent shareholders and a fair and reasonable opinion from an independent financial adviser).

66. One of the important objectives of Rule 25 is to prevent some shareholders from receiving more than others in the context of an offer. The existence of a special deal might also impact, directly or indirectly, the amount of consideration that an offeror is prepared to pay to acquire a controlling interest in a company and is relevant to shareholders' consideration of an offer.

67. Practice Note 17 summarises the Executive's approach to special deals as follows:

(i) *"If a special deal arrangement is capable of being extended to all other shareholders, it should be so extended;*

(ii) *If a special deal arrangement is **not capable of being extended** to shareholders **but** the special benefit received by the counter-party shareholder(s) **can be quantified**, **the value of the benefit should be appropriately reflected in the offer price;***

(iii) *If a special deal arrangement is **not capable of being extended** and the special benefit conferred on the counter-party shareholder(s) **cannot be quantified**, in cases where considered appropriate, the Executive may consent to these deals subject to compliance with the requirements of Note 4 to Rule 25, in particular, that (a) an independent financial adviser to the offeree company publicly states that in its opinion the terms of the transaction are fair and reasonable; and (b) the transaction is approved at a general meeting of the offeree company's shareholders who are not involved in or interested in the transaction." (emphasis added)*

68. The Executive noted that, in their view, Note 5 to Rule 25 made it clear that repayment or assignment of a shareholders' loan is a special deal, and provided the relevant consent and approval procedures for such special deal. The Executive referred to the mandatory general offer for Incutech Investments Limited (stock code: 356) ("**Incutech**") where the repayment of indebtedness using the proceeds from the subscription of shares in Incutech was treated as a special deal under Note 5 to Rule 25 and the relevant consent and approval procedures were followed.
69. The Executive considered the Unsecured Obligations to be similar to the shareholders loans contemplated under Note 5 to Rule 25 and therefore the transfer of the Unsecured Obligations to be a special deal that is prohibited under Rule 25. However, by completing such transfer, the Offeror has already breached the prohibition under Rule 25 and cannot take advantage of Note 5 to Rule 25 by going through the consent process in accordance with Practice Note 17. The Executive also does not consider "retrospective ratification" by Suncity shareholders to be appropriate because: (a) Note 5 is a concession to the general prohibition against special deals under Rule 25 and a person who is already in breach of the prohibition should not subsequently rely on such concession (in order words, he is not coming "with clean hands"); and (b) if the independent shareholders of Suncity were to vote down the special deal, it is not a matter of simply "unwinding" the transactions in question as a mandatory general offer has already been triggered as a result of the transfer of the Suncity Shares. Consistent with the previous practice of the Executive and the Panel, once a mandatory general offer has been triggered, the parties cannot "undo" the transaction and not proceed with a mandatory general offer.
70. The Executive disagreed with Yu Ming's view that Mr. Chau suffering a loss as a result of the Loan Assignment and the SPAs means that there is no favourable condition extended to him and therefore there is no special deal consideration. A favourable condition exists where a shareholder gets additional benefit in a transaction or arrangement, not whether he makes a loss or a profit in such arrangement. The Executive referred to the Panel decision in the case of Alibaba Health Information Technology Limited (stock code: 241) where the Panel in that case rejected the argument that a favourable condition could only occur if Alibaba gave a greater value to an asset than could be obtained from a third party, i.e., that the recipient had to make a profit out of the special deal. A favourable condition is simply something of value or benefit that has been received by the shareholder, not necessarily something in excess of the value of the asset being sold.
71. On balance, the Executive concluded the Total Consideration Option to be the more appropriate approach in the current case because the Offeror has already breached Rule 25 by completing a special deal that is prohibited under Rule 25. Therefore, any benefit from the special deal should be extended to all other shareholders under the mandatory general offer. Also, the Total Consideration Option is an anti-avoidance mechanism to prevent potential transaction structures that attempt to transfer additional premium/benefit from a purchaser to a vendor without extending such premium/benefit to other shareholders in the context of an offer.

THE PANEL'S DECISION AND THE REASONS FOR IT

Special deal and appropriate offer price

72. In deciding the appropriate offer price for the Share Offer, it is important to understand the substance of the transactions leading to the Share Offer as the current case presents a set of unique facts and circumstances with multiple parties involved.
73. The background of the current case is summarised in paragraphs 14 to 26 above. The Panel agrees with the Executive's view to see through the investment holding companies, namely the Borrower, Fame Select, Champion Trade and Major Success. By virtue of the Loan Assignment and the SPAs as described in paragraphs 21 and 22 above, the Lenders recovered the Loan and assigned the security interests under the Loan to Mr. Lo at a consideration of HK\$344,383,562, which corresponded to the sum of the principal amount of the Loan and outstanding interest as at the date of the Loan Assignment (i.e. 13 May 2022). Mr. Lo, through the Offeror, became interested in the Suncity Sale Shares (together with other Suncity Securities) which triggered the mandatory general offer obligation.
74. The Panel noted that the Loan Assignment did not include any breakdown of the consideration for each security interest and it is clear from the terms of the Loan Assignment that this agreement serves to document the recovery of the Loan by the Lenders and the associated assignment of the security interests.
75. In substance, Mr. Lo (i) discharged Mr. Chau's liability to the Lenders under the Loan and (ii) obtained the titles and benefits to a basket of securities originally charged to secure repayment of the Loan, which include the Suncity Sale Shares.
76. The Loan Assignment constitutes a special deal under Rule 25 of the Takeovers Code. It is part of an arrangement whereby Mr. Chau's liability to the Lenders under the Loan was discharged. The discharge of Mr. Chau's liability under the Loan was a favourable condition extended to a shareholder (Mr. Chau) which was not extended to all shareholders of Suncity. The favourable condition is clearly quantifiable as the amount of liability discharged is HK\$344,383,562.
77. The underlying purpose of Rule 25 is derived from General Principle 1 which requires that all shareholders of the same class be treated similarly. This is a fundamental principle of the Takeovers Code. Rule 25 serves to prevent some shareholders from receiving more than others in the context of an offer and Practice Note 17 clearly provides that where the benefit received by a shareholder can be quantified, the value of the benefit should be appropriately reflected in the offer price.
78. Based on the above analysis, it is the Panel's view that the appropriate offer price for the Share Offer should be determined by dividing HK\$344,383,562 by the number of Suncity Sale Shares (4,991,643,335), which comes to HK\$0.0690 per Suncity Share (rounded up to four decimal places).
79. The Panel disagrees with the premise of the argument advanced by Yu Ming that Mr. Chau has suffered a substantial loss in value for the Unsecured Obligations and therefore a favourable condition to Mr. Chau did not exist. The Panel in the case of Alibaba Health Information Technology Limited decided that a favourable condition is one in which a positive value or benefit is received by the shareholder under an

arrangement with the offeror and not something in excess of this. In other words, the existence of a favourable condition does not depend on whether the relevant shareholder makes an overall gain or a loss in the arrangement. The discharge of Mr. Chau's liability under the Loan is a positive value received by him. Whether he suffered a loss or received consideration in excess of the value of the Securities transferred is not relevant for the purpose of determining whether there is a special deal under Rule 25.

80. The Panel also disagrees with Yu Ming's argument that since Mr. Chau was not involved in any negotiation or execution of the Loan Assignment and the SPAs because of his arrest and detention, the current case should be distinguished from one where a special deal was supposedly formulated by a controlling shareholder for its own extra benefit. As can be seen from the language in Rule 25 and its notes, the intent of the shareholder receiving the benefit under the arrangement is not a factor for determining whether there is a special deal. What is important is whether a benefit is extended and not the reason why. Following this analysis, it is not necessary for the Panel to come to a view on whether the series of transactions in the current case was wholly arms' length in nature or whether it was designed to shift control from Mr. Chau to Mr. Lo.
81. As can be seen from the Notes to Rule 25 and Practice Note 17, not all special deals are prohibited. The Executive's consent may be obtained for certain special deals subject to the procedural safeguards provided under the Notes to Rule 25 and Practice Note 17 (i.e. majority vote by independent shareholders and a fair and reasonable opinion from an independent financial adviser).
82. The Panel notes the confirmation by Yu Ming at the Panel hearing that it was aware of the potential implications of Rule 25 when the Loan Assignment and SPAs were entered into but it did not consider a favourable condition existed. Given the discharge of liability under the Loan and the assignment of the Unsecured Obligations involved Mr. Chau who was a controlling shareholder of Suncity and that a special deal is prohibited except with the consent of the Executive under Rule 25, the Offeror and Yu Ming should have consulted the Executive on whether the arrangement fell within the ambit of General Principle 1 and Rule 25 prior to completion of the Loan Assignment and the SPAs to avoid breaching Rule 25 (see also paragraphs 83 and 87 below).
83. By completing the Loan Assignment and the SPAs, the Offeror breached Rule 25. The procedural safeguards provided under the Notes and Practice Note 17 are no longer available to the Offeror because the procedural safeguards provide a means to permit a special deal, not to ratify a special deal that has happened.
84. The Panel has considered all three options included in the Panel Paper in detail and for completeness sake, sets out its views on each of the options below:

Allocation Option

85. The Panel notes that the allocation of the SPA Consideration was determined solely by Mr. Lo without any arms' length negotiation with independent third parties. Yu Ming put forward arguments justifying the significant value of the Unsecured Obligations and the reasonableness of such allocation and also commented that the Total Consideration Option proposed by the Executive completely ignored the significant value of the Unsecured Obligations and such decision would be irrational in the public law sense based on advice from Senior Counsel. Yu Ming also provided the Valuation signed off

by BDO, which adopted completely different methodologies to the Allocation Option.

86. The Panel is in no doubt that there are multiple ways to value each of the Suncity Securities and even if the same methodology is adopted, different assumptions used will affect the valuation of the Suncity Securities. The purpose of the Panel hearing is to determine the appropriate offer price for the Share Offer, not to decide whether the allocation of the SPA Consideration in the SPA (Suncity Securities) among the Suncity Securities is commercially reasonable or not. These are two different matters. The Panel acknowledges that there may be valid reasons for Mr. Lo's allocation of the SPA Consideration despite both parties to the two SPAs being wholly owned by him, but the Panel is not concerned about the actual allocation amount to each Suncity Security nor the methodology for valuing such assets. The Panel's decision to determine the offer price based on the total amount of the Loan and outstanding interest (which is the same as the SPA Consideration) does not disregard the value of the Unsecured Obligations. Their values (whatever the amounts) remain to be those derived from their respective agreements and/or instruments. However, for the purpose of the special deal considerations which form the basis of the Panel's decision, it is not necessary for the Panel to form a view on the value of each Unsecured Obligation.
87. The Panel recognises that the Unsecured Obligations may be of significant value and it is understandable that one would argue that a portion of HK\$344,383,562 was paid for these assets. However, the concern in the current case is the special deal benefit received by Mr. Chau which should be extended to other shareholders of Suncity under Rule 25. If the Offeror wished to argue that any part of that sum should not be considered as a benefit to Mr. Chau it should have consulted with and obtained consent from the Executive and followed the procedural safeguards under Practice Note 17 prior to completing the Loan Assignment and the SPAs. The completion of the Loan Assignment and the SPAs deprives minority shareholders of Suncity of the opportunity to consider the special deal arrangement with the benefit of an opinion on fairness and reasonableness of such arrangement from an independent financial adviser. Under such circumstances, the Panel considers it not appropriate to adopt the Allocation Option.
88. Although the Panel is not required to address the two hypothetical situations raised by Yu Ming at the Panel hearing, nevertheless, the Panel has considered these situations in relation to the application thereto of Rule 25.

The first hypothetical situation assumes that instead of the Unsecured Obligations, Mr. Chau pledged a real estate asset with significant value well exceeding the Loan amount. As explained in paragraphs 75, 76 and 87 above, the special deal arrangement is the discharge of the liability of Mr. Chau under the Loan. Replacing the Unsecured Obligations with other pledged assets with higher or lower value would not affect the analysis.

The second hypothetical situation assumes that the loan amount is significantly higher than the value of the assets pledged. The same analysis would apply and in this situation, there is an even greater concern that the shareholder receives a significant benefit (being the significant amount of liability discharged), the value of which should be extended to minority shareholders unless the Executive has given its consent and the procedural safeguards under Practice Note 17 have been followed.

Market Price Option

89. It is not disputed by the Executive or Yu Ming, and the Panel agrees, that the Market Price Option is not appropriate for the current case as clear consideration has been paid by Mr. Lo.

Total Consideration Option and Note 5 to Rule 25

90. The Executive considered that the acquisition of the Unsecured Obligations by the Offeror from Mr. Chau constituted a special deal and the benefit received from such acquisition should be extended to all other Suncity shareholders. The Panel agrees that the acquisition of the Unsecured Obligations would fall within the ambit of Note 5 to Rule 25 as it is an assignment to the Offeror of debts due from Suncity.
91. As explained in paragraphs 75 and 76 above, the Panel considers the discharge of Mr. Chau's liability under the Loan to be a special deal and therefore the total amount of the Loan and outstanding interest should be used to determine the offer price. Such amount is the same as the SPA Consideration and therefore the Panel's decision on the offer price is the same as that proposed by the Executive under the Total Consideration Option.
92. Finally, the Panel wishes to place on record that, to the extent there is any discrepancy between the reasons given in the brief oral summary of the decision at the end of the Panel hearing and this written decision, the written reasons should prevail.

27 August 2022

Parties attending the Panel Hearing:

The Takeovers Executive

Mr. Abraham Chan S.C. (legal adviser to the Panel as to procedural matters)

Yu Ming Investment Management Limited (financial adviser to the Offeror)

Lo & Lawyers (legal adviser to the Offeror)

Suncity Group Holdings Limited (the Company)

Merdeka Corporate Finance Limited (financial adviser to the Company)

Footnote: Mr. Lo was not precluded from attending the Panel hearing.