

## Takeovers Appeal Committee releases decision on Shun Ho Resources Holdings Limited Mr Jim Wong and Mr Danny Chan publicly reprimanded

15 Apr 1999

In a written decision issued on 8 April 1999 the Takeovers Appeal Committee has upheld the public reprimand previously imposed by the Takeovers Panel on Mr Jim Wong and Mr Danny Chan arising out of their involvement in the purchase of shares in Shun Ho Resources Holdings Ltd. by certain parties in breach of the Takeovers Code.

The background to the Takeovers Appeal Committee decision stems from the decision of the Takeovers Panel in January 1994 that in November 1988 Mr William Cheng and Ms Geraldine Wong had acted in concert in acquiring more than 35% of the shares in Shun Ho without making a general offer for the remaining shares in the company, thereby breaching the provisions of the Takeovers Code. The Panel also found that Mr Wong's involvement in the matter as director of Shun Ho and Mr Chan's involvement as an Executive Director of Mansion House Securities Ltd, amounted to a breach of the spirit of the Takeovers Code.

The Takeovers Panel originally removed that part of the section in its decision dealing with the sanctions to be imposed for the breaches of the Code pending appeals to the Takeovers Appeal Committee by all four parties on the appropriateness of those sanctions. Those appeals were in fact deferred pending the outcome of judicial review proceedings against the Panel and the SFC by Mr Cheng.

In October 1995 the Privy Council ruled against Mr Cheng in his judicial review proceedings and in November 1995 Mr Cheng accepted the Panel's decision and apologised for having contested the Panel proceedings. As Mr Cheng was unable or unwilling to compensate the minority shareholders of Shun Ho for the failure to make a general offer as directed by the Panel, he also accepted the Panel's order that he be denied access to the securities markets for a five year period or until he compensated the minorities. The Panel's order remains in force and is due to expire on 24 November 2000. In March 1996 the SFC announced that it had revoked the registration of Ms Geraldine Wong as a securities dealer's representative. Ms Wong withdrew her appeal to the Takeovers Appeal Committee in May 1996.

In respect of Mr Wong, the Panel had found that he was knowingly involved in an acquisition of shares in September 1990 by Mr Cheng. Mr Cheng had arranged for Mr Chuang, a person in control of a substantial shareholder of Shun Ho, to effect certain share purchases in order to support the rights issue of Shun Ho announced on 8 June 1990. In so doing, Mr Cheng agreed to take up half of the purchases made by Mr Chuang. The Panel found that pursuant to this arrangement, Mr Wong participated by proposing a nominee purchaser, a company by the name of Star King, to receive half of the shares purchased by Mr Chuang. The Panel found that Mr Wong was prepared to be involved with what would clearly be a breach of the Code had it not been for the peculiar situation that Mr Cheng was already in breach of the Code in November 1988 by virtue of Mr Cheng's and Ms Wong's aggregate shareholding which exceeded 35%. Although the September 1990 acquisition technically did not breach the Code, it clearly breached the spirit of the Code.

The Panel found as a fact that Mr Wong knew the nature of the transaction he was participating in. Further, the Panel found that Mr Wong took responsibility with other directors of Shun Ho for the offeree document issued in May 1991 when he knew that the document did not comply with the Code. The Panel strongly criticised Mr Wong's conduct.

The Takeovers Appeal Committee upheld the Panel's criticism of Mr Wong noting that he-

"did not put forward any mitigating circumstances or indeed any argument as to why based on these facts, the sanction was plainly unfair or excessive."

The Panel had found that Mr Chan had granted Mr Cheng an option at a price well below the then market price of the shares of Shun Ho. This option was subsequently exercised by Mr Cheng thereby triggering a general offer to be made at a price considerably below the then market price. The Panel

found that the transaction was a device to enable Mr Cheng to exceed the 35% threshold at a low price and at a time convenient to him. This transaction technically did not breach the Code as at that stage Mr Cheng already held more than 35% of the voting rights in the company. However, any person affected by the Code should observe the spirit as well as the language of the Code. Although technically not in breach of the letter of the Code, Mr Chan must have been in breach of the spirit of the Code in attempting to assist Mr Cheng to contravene the Code.

The Panel found that Mr Chan must have known that the option arrangement could only have been a device to avoid the Code and that his explanation to the SFC of how the option exercise price was arrived at was false, misleading and incomplete. The Panel criticised Mr Chan for his conduct.

The Takeovers Appeal Committee upheld the Panel's criticism of Mr Chan noting that –

"No mitigating circumstances were put forward. He showed no signs of remorse. Indeed, he attempted to mislead the SFC by providing false and incomplete information..... This was a serious and calculated attempt to breach the Code. [Mr Chan's] attempt to conceal his guilt by providing false information can only be an aggravating factor."

Copies of the English version of the full decision of the Takeovers and Mergers Panel and decision of the Takeovers Appeal Committee are available from the SFC.

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