# SFC commences disciplinary proceedings against chairman of Pearl Oriental Oil Limited and others for alleged breach of Takeovers Code

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The Securities and Futures Commission's (SFC) Takeovers Executive has today commenced disciplinary proceedings before the Takeovers and Mergers Panel (Takeovers Panel) against the chairman of Pearl Oriental Oil Limited (Pearl Oriental), Mr Wong Yuk Kwan (also known as Wong Kwan), and four other people as the Executive believes that there has been a breach of the Code on Takeovers and Mergers (Takeovers Code) (Notes 1 & 2).

The SFC alleges that Wong and the four actively co-operated to assist Wong to obtain or consolidate control of Pearl Oriental (this is known as "acting in concert" under the Takeovers Code) and avoid the obligations under the Takeovers Code to make a general offer for the shares of the company (known as Pearl Oriental Innovation Limited at the material time) (Notes 3, 4 & 5).

The other four individuals involved in the disciplinary proceedings are Mr Ma Yueng-Lin, Ms Li Jiong Jenny, Ms Yip Sui Kuen Kitty and Ms Yik Siu Hung. Ma, Li and Yip were closely connected to Wong and Yik was one of Wong's business partners.

In late 2009, Wong and Yik invested in a gas and oilfield in Utah, USA. In January 2010, they agreed to sell their interests in the gas and oilfield to Pearl Oriental in a US$200 million deal to be paid in a combination of cash and new shares to be issued by Pearl Oriental.

At that time, Wong held a 43.38% stake in Pearl Oriental while Yik had a 1.53% interest in the company. The new shares to be issued by Pearl Oriental to Wong and Yik would have increased their shareholdings in the company to 44.50% and 12.37% respectively. The SFC raised concerns that this might trigger an obligation for Wong and Yik to make a general offer under the Takeovers Code to all the company's shareholders to buy their shares.

Whilst the acquisition of the gas and oilfield was completed in stages, the issuance of the new shares in Pearl Oriental was deferred so that a general offer obligation under the Takeovers Code would not be triggered.

On 16 May 2011, Wong purported to sell his entire stake in Pearl Oriental for $825 million to Ma, Li and Yip, all of whom were described at the time as independent third parties. Not only were Ma, Li and Yip closely connected to Wong but they never paid Wong for the shares (Note 6). On the following day, Wong and Yik received the new shares issued by Pearl Oriental. Yik immediately passed her shares on to Wong without money changing hands, boosting Wong's direct stake in the company to 26.35% which was below the 30% threshold to trigger a mandatory general offer.

Wong's purported sale of shares to Ma, Li and Yip enabled Wong to take up not only the new shares to be issued to him by the company but also those to be issued to Yik and to avoid an obligation under the Takeovers Code to make a general offer while still maintaining control of the company. It is alleged that rather than being genuine buyers at all material times the trio held the Pearl Oriental shares on behalf of Wong. This type of arrangement is commonly referred to as "warehousing".

End

Notes:

1. The Takeovers Code is issued by the SFC as one of its functions under the Securities and Futures Ordinance. It is designed principally to afford fair treatment for shareholders by requiring equality of treatment of shareholders of the same class.
2. Takeovers Executive means the Executive Director of the Corporate Finance Division of the SFC or any delegate of the Executive Director.
3. The Takeovers Code defines persons as acting in concert if they reach an agreement or understanding (whether formal or informal) to actively co-operate to obtain or consolidate control of a company through the acquisition by any of them of voting rights in that company.
4. Rule 26 is the overriding rule in the Takeovers Code and provides the circumstances in which a mandatory

general offer must be made. This reflects General Principle 1 of the Takeovers Code and underpins the requirement for equal treatment of shareholders. Failure to make an offer that is required to be made under Rule 26.1 constitutes a serious breach of the Takeovers Code.

Under Rule 26.1 a mandatory offer will be triggered whenever a person (together with persons acting in concert with him) acquires, whether through a series of transactions over a period of time or not, 30% or more of the voting rights of a company. This is known as the trigger.

A mandatory offer will also be triggered under Rule 26.1 if a person (together with persons acting in concert with him) collectively holds between 30% and 50% and acquires more than 2% from the lowest percentage held in any 12-month period. This is known as the creeper.

5. Wong was chairman of the board of directors and chief executive officer of Pearl Oriental at all material times.
6. Wong's stake in Pearl Oriental stood at 35.72% immediately before the sale of all of his existing shares in the company to Ma, Li and Yip.
7. The disciplinary proceedings before the Takeovers Panel will be held in public. Details of the proceedings can be found in the "Regulatory functions" – "Listings & takeovers" – "Takeovers & Mergers" – "Disciplinary proceedings before the Takeovers Panel" section of the SFC website at www.sfc.hk. The procedures for disciplinary hearings before the Takeovers Panel are set out in section 13 of the Introduction to the Takeovers Code and in the Rules of procedure for disciplinary hearings.

   If the Takeovers Panel finds there has been a breach of the Takeovers Code it is empowered to issue a range of sanctions including imposing a "cold shoulder order" which would deny the person being sanctioned direct or indirect access to the Hong Kong securities markets for a period of time specified by the Takeovers Panel.

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