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SFC publicly censures Chan Shing and imposes a cold-shoulder order for breach of the Takeovers Code

7 Jun 2018

The Securities and Futures Commission (SFC) has publicly censured and imposed a 24-month cold-shoulder order (Note 1) against Chan Shing for breaching the mandatory general offer obligation of the Takeovers Code (Note 2).

Chan was the chairman and managing director of Burwill Holdings Limited at the time the breach took place. He and his concert parties increased his shareholding in Burwill to 34.45% on 28 April 2014, triggering a mandatory offer obligation under Rule 26.1(d) of the Takeovers Code (Note 3). No offer was made by him.

Chan told the Executive (Note 4) that he was not familiar with the Takeovers Code and was not aware of the general offer obligation. He accepted that he has breached the Takeovers Code and deprived Burwill's shareholders of the right to receive a general offer for their shares. Chan agreed to the current disciplinary action against him.

Parties who wish to take advantage of the securities markets in Hong Kong should conduct themselves in matters relating to takeovers, mergers and share buy-backs in accordance with the Takeovers Code. Chan's conduct fell short of the expected standards and disregarded one of the most fundamental provisions of the Takeovers Code. This merits strong disciplinary action.

The [Executive Statement](#) can be found in the "[Listings & takeovers – Takeovers and Mergers – Decisions & statements – Executive decisions and statements](#)" of the SFC website.

End

Notes:

1. Chan will be denied direct or indirect access to the Hong Kong securities market for a period of 24 months commencing on 7 June 2018 to 6 June 2020.
2. The Code on Takeovers and Mergers.
3. Chan together with his concert parties held a 27.2% interest in Burwill as at 25 May 2018.
4. The Executive Director of the SFC's Corporate Finance Division or his delegate.

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Takeovers Executive of the SFC sanctions Mr Chan Shing for breaching Rule 26.1 of the Takeovers Code

Sanctions

1. The SFC today publicly censures and imposes a 24-month cold-shoulder order against Mr Chan Shing ("**Mr Chan**") for breaching the mandatory general offer obligation under Rule 26.1 of the Code on Takeovers and Mergers ("**Takeovers Code**"). Mr Chan will be denied direct or indirect access to the Hong Kong securities market for a period of 24 months commencing on 7 June 2018 to 6 June 2020.

Background and key facts

2. Burwill Holdings Limited ("**Burwill**") has been listed on the Main Board of the Hong Kong Stock Exchange since 15 September 1983. Mr Chan joined Burwill as chairman and managing director in 1998 and was its managing director and chairman at the time the breach took place.
3. As at 25 May 2018, Mr Chan and his concert parties ("**Concert Group**") were interested in 27.2% of Burwill. These shares were held by Mr Chan, Mr Chan's spouse, Glory Add Limited ("**Glory Add**"), Strong Purpose Corporation ("**Strong Purpose**") and Hang Sing Overseas Limited ("**Hang Sing**") as to 3.4%, 2.07%, 17.5%, 4.22% and 0.01%. Glory Add and Strong Purpose are both ultimately wholly-owned by Mr Chan and his spouse while Hang Sing is ultimately wholly-owned by Mr Chan's spouse.
4. Mr Chan acquired shares in Burwill on-market throughout April 2014. On 28 April 2014 Mr Chan acquired (through Glory Add) 40,522,000 Burwill shares on-market ("**Acquisition**") increasing the Concert Group's collective interest to 34.45%. As a result of the Acquisition, a mandatory general offer was triggered as the Concert Group's aggregate interest in Burwill had increased by more than 2% from its lowest collective percentage interest of 31.96% in the 12 months prior to 28 April 2014.
5. Mr Chan has accepted that he breached Rule 26.1(d) of the Takeovers Code and deprived Burwill's shareholders of the right to receive a general offer for their shares. He has sincerely apologised for the breach and claimed that he was unaware that the Acquisition might trigger a mandatory general offer obligation under the Takeovers Code at the time of the Acquisition.

Relevant provision of the Takeovers Code

6. Rule 26.1 of the Takeovers Code provides that:

"Subject to the granting of a waiver by the Executive, when...

- (d) two or more persons are acting in concert, and they collectively hold not less than 30%, but not more than 50%, of the voting rights of a company, and any one or more of them acquires additional voting rights and such acquisition has the effect of increasing their collective holding of voting rights of the company by more than 2% from the lowest collective percentage holding of such persons in the 12 month period ending on and inclusive of the date of the relevant acquisition;*

that person shall extend offers, on the basis set out in this Rule 26, to the holders of each class of equity share capital of the company, whether the class carries voting rights or not..."

7. It follows that a mandatory general offer obligation was triggered on 28 April 2014 but no general offer has been made in breach of Rule 26.1(d) of the Takeovers Code.

Sanctions against Mr Chan

8. The Executive has carefully considered the evidence in this case including Mr Chan's apology and his acceptance that he has breached Rule 26.1(d) of the Takeovers Code.
9. Rule 26.1 is one of the most fundamental provisions in the Takeovers Code. The Executive expects persons who are actively engaged in the securities market to comply with the Takeovers Code which includes seeking professional advice as and when needed. This is particularly the case in respect of a director of a listed company who must use the best of his or her abilities to comply with the Takeovers Code. In case of doubt, the Executive should be consulted at the earliest opportunity.
10. Mr Chan's conduct fell short of the standards expected of him and amounts to a disregard of the Takeovers Code which merits strong disciplinary action. Mr Chan has accepted the disciplinary action taken against him under section 12.3 of the Introduction of the Takeovers Code.
11. The Executive takes this opportunity to remind practitioners and parties who wish to take advantage of the securities markets in Hong Kong that they should conduct themselves in matters relating to takeovers, mergers and share buy-backs in accordance with the Takeovers Code. If they do not, they may find by way of sanction, that the facilities of such markets are withheld in order to protect those who participate in Hong Kong's securities markets.

7 June 2018

SECURITIES AND FUTURES COMMISSION

**Order pursuant to section 12 of the Introduction to the Hong Kong Codes on
Takeovers and Mergers and Share Buy-backs**

Mr Chan Shing

The Executive Director of the Corporate Finance Decision of the SFC ("Executive Director") hereby **REQUIRES** that all licensed corporations, licensed representatives, registered institutions within the meaning of the Securities and Futures Ordinance (Cap. 571) and relevant individuals within the meaning of section 20(10) of the Banking Ordinance (Cap. 155) shall not, without the prior consent of the Executive in writing:

- act or continue to act directly or indirectly in their capacity as licensed corporations, licensed representatives and registered institutions or relevant individuals for Mr Chan Shing or any corporation controlled by him (as defined in the Hong Kong Codes on Takeovers and Mergers and Share Buy-backs); or
- knowingly assist directly or indirectly in a breach of this Order;

during the period commencing on 7 June 2018 and ending on 6 June 2020.

BY ORDER



Brian Ho

Executive Director

7 June 2018