

SFC publicly criticises Kwok Tse Wah for breaches of Takeovers Code

10 Apr 2019

The Securities and Futures Commission (SFC) has publicly criticised Kwok Tse Wah for breaching the dealing restrictions and dealing disclosure obligations under the Takeovers Code (Note 1).

On 5 December 2018, Hopewell Holdings Limited (Hopewell) and the offeror made a joint announcement about the possible privatisation of Hopewell. Kwok is the father of an individual who is a director and one of the ultimate beneficial owners of the offeror. He is therefore a party acting in concert with the offeror in the proposed privatisation (Note 2).

On 6 December 2018, Kwok sold 40,000 shares in Hopewell. The sale and the failure to disclose it publicly within the applicable time limit constituted breaches of Rule 21.2 and Rule 22 of the Takeovers Code (Note 3).

Kwok has accepted that he breached the Takeovers Code and has agreed to the disciplinary action taken against him.

The SFC wishes to take 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 Codes. If there is any doubt about the application of the Takeovers Code, the Executive (Note 4) should be consulted at the earliest opportunity.

A copy of the Executive's Statement can be found in the "[Executive decisions and statements](#)" section of the SFC website.

Notes:

1. The Code on Takeovers and Mergers.
2. An offer period commenced for Hopewell on 4 December 2018 when Hopewell first announced a proposed privatisation.
3. Rule 21.2 of the Takeovers Code requires that during an offer period, the offeror and persons acting in concert with it must not sell any securities in the offeree company without the prior consent of the Executive. Rule 22.1(a) provides that "*[d]ealings in relevant securities by an offeror or the offeree company, and by any associates of either of them, for their own account during an offer period must be publicly disclosed in accordance with Notes 5, 6 and 7 to this Rule 22.*"
4. The Executive Director of the SFC's Corporate Finance Division or his delegate.

證監會公開批評郭子華違反《收購守則》

2019年4月10日

證券及期貨事務監察委員會（證監會）公開批評郭子華違反《收購守則》（註1）下的交易限制及交易披露責任。

合和實業有限公司（合和）與要約人在2018年12月5日就可能將合和私有化一事發表聯合公告。郭是要約人的一名董事的父親，而該名董事亦是要約人的其中一名最終實益擁有人，故在私有化建議中，郭是與要約人一致行動的人（註2）。

郭在2018年12月6日出售40,000股合和股份。由於他出售這些股份及沒有在適用時限內公開披露此事，故違反了《收購守則》規則21.2及規則22（註3）。

郭已承認他違反了《收購守則》，及已同意對他採取的紀律行動。

證監會希望藉此機會提醒香港證券市場的從業員及有意利用香港證券市場的人士，在進行有關收購、合併及股份回購的事宜時，應根據兩份守則遵守適當的操守標準。如對《收購守則》的適用範圍有任何疑問，應盡早諮詢執行人員（註4）的意見。

執行人員的聲明可於證監會網站的 [《執行人員的決定及聲明》](#) 一欄取覽。

備註：

1. 《公司收購及合併守則》。
2. 合和的要約期在其於2018年12月4日首次公布私有化建議當日展開。
3. 《收購守則》規則21.2規定，在要約期內，要約人及與其一致行動的人未得執行人員事先同意，不得出售任何受要約公司證券。規則22.1(a)規定，“要約人或受要約公司，及它們兩者之一的任何聯繫人在要約期內為本身進行的有關證券的交易，必須根據本規則22註釋5、6及7加以公開披露。”
4. 證監會企業融資部執行董事或獲其轉授權力的人士。

最後更新日期：2019年4月10日

Takeovers Executive of the SFC publicly criticises Kwok Tse Wah in relation to breaches of the dealing restriction and dealing disclosure obligations under Rules 21.2 and 22 of the Takeovers Code

Disciplinary action against Kwok Tse Wah

1. The Executive publicly criticises:

Kwok Tse Wah (“**Mr Kwok**”) for breaching Rules 21.2 and 22 of the Code on Takeovers and Mergers (“**Takeovers Code**”) as a result of his failure to: (i) seek the Executive’s consent prior to selling shares in Hopewell Holdings Limited during an offer period; and (ii) disclose his dealings in the shares of Hopewell Holdings Limited.

Mr Kwok accepts that he breached the Takeovers Code and agrees to the disciplinary action taken against him under section 12.3 of the Introduction to the Takeovers Code.

Background and relevant provisions of the Takeovers Code

2. Hopewell Holdings Limited (the “**Company**”)(stock code: 54) has been listed on the Main Board of the Stock Exchange of Hong Kong Limited since 1972. It is engaged in property investment, power, hotel and hospitality and other businesses.
3. On 4 December 2018, an offer period commenced for the Company when the privatisation of the Company was first announced. On 5 December 2018, Petrus HK Co Limited (the “**Offeror**”) and the Company issued a joint announcement announcing details of the privatisation proposal by way of a scheme of arrangement (the “**Joint Announcement**”).
4. The Offeror was formed for the purpose of the privatisation proposal and it is wholly-owned by Latour HK Co Ltd (“**Latour HK**”). Each of Sir Gordon Wu and Lady Ivy Wu has an indirect 50% interest in Latour HK¹ and both are directors of Latour HK and the Offeror.
5. Under the privatisation proposal, each scheme shareholder would receive \$38.80 in cash for each scheme share. The scheme document on the proposed privatisation was despatched to shareholders on 25 February 2019.

Relevant provisions under the Takeovers Code

6. *Rule 21.2 Restrictions on dealings during the offer*

Rule 21.2 requires that “[d]uring an offer period, the offeror and persons acting in concert with the offeror must not sell any securities in the offeree company except with the prior consent of the Executive and following 24

¹ The shareholding structure of Latour HK will change prior to the privatisation proposal becoming effective such that Sir Gordon Wu and Lady Ivy Wu will continue to be interested in 76.15% of Latour HK with the remaining 23.85% held by others including Sir Gordon Wu’s and Lady Ivy Wu’s family members.

hours public notice that such sales might be made.... Sales below the value of the offer will not be permitted...”

7. *Rule 22 Disclosure of dealings during offer period*

During an offer period, Rule 22 of the Takeovers Code requires an offeror and its associates to disclose their dealings in the relevant securities (as defined in Note 4 to Rule 22) of an offeree company conducted for themselves or on behalf of discretionary clients.

Measures taken by the Offeror regarding dealing restrictions under the Takeovers Code

8. On 5 December 2018, around the time of the publication of the Joint Announcement, Sir Gordon Wu verbally informed Mr Kwok that: (i) the Offeror made a proposal to privatise the Company; and (ii) by reason of Mr Kwok being Lady Ivy Wu’s father, he could not buy or sell shares in the Company and could not vote at the court meeting.
9. On 7 December 2018, the Offeror sent each of its concert party: (i) a reminder of the dealing disclosure obligations under Rule 22 of the Takeovers Code; and (ii) a do’s and don’ts letter summarising a concert party’s obligations under the Takeovers Code which included a restriction on dealing. Mr Kwok signed an acknowledgment confirming receipt of the reminder and the letter on the same day.

Breaches of the Takeovers Code

10. On 6 December 2018, which was two days after the commencement of the offer period, Mr Kwok sold 40,000 shares in the Company on-market, representing approximately 0.005% of the total issued shares in the Company² (the “Dealings”).
11. As at the date of the Joint Announcement, Mr Kwok held 951,600 shares of the Company representing 0.11% of the Company. Following the Dealings, Mr Kwok’s interest in the Company was reduced to 911,600 shares representing 0.10% of the Company.
12. On 14 February 2019, the Offeror became aware of the Dealings and informed the Executive. On 18 February 2019, a disclosure of interest form on the Dealings was filed with the Executive.

Mr Kwok breached Rules 21.2 and 22 of the Takeovers Code

13. **Mr Kwok, as the father of Lady Ivy Wu**, is a party acting in concert with the Offeror. Accordingly, he is subject to the dealing restrictions under Rule 21.2 and the dealing disclosure obligations under Rule 22 of the Takeovers Code.

² 20,000 Hopewell shares were sold at HK\$34.00 per share and 20,000 Hopewell shares were sold at HK\$34.20 per share.

14. Mr Kwok's disposal of the Company's shares and his subsequent failure to disclose the Dealings by 12.00 noon on the following business day constituted breaches of Rules 21.2 and 22 of the Takeovers Code.

Executive's comments

15. The dealing restrictions imposed on an offeror and its concert parties under Rule 21 is designed to protect shareholders and ensure a fair and informed market.
16. Similarly, the disclosure obligations under Rule 22 of the Takeovers Code are designed to reflect the fact that a high degree of transparency in dealings in an offeree company's shares during the critical period of an offer is essential to the efficient functioning of the market.
17. In reaching its decision to impose sanctions against Mr Kwok, the Executive paid particular regard to the standards of behaviour and integrity that might reasonably be expected of concert parties of an offeror. The Executive expects concert parties of an offeror to use the best of their abilities to comply with the Takeovers Code, which may involve seeking professional advice as and when needed.
18. The Executive notes that Mr Kwok was reminded of the dealing restrictions under the Takeovers Code prior to the Dealings. The Offeror's legal adviser also sent him a reminder of the requirements of the Takeovers Code following publication of the Joint Announcement. Mr Kwok should have been aware of the requirements of the Takeovers Code and his own actions led to the breaches of the Takeovers Code.
19. While the Executive recognises Mr Kwok's cooperation in relation to its review of this matter, the Executive considers the breaches in this case to be serious and merit the present disciplinary action. Mr Kwok has accepted the disciplinary action taken against him under section 12.3 of the Introduction to the Takeovers Code.
20. The Executive wishes to take 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 takeovers and mergers-related matters in accordance with the Takeovers Code. If there is any doubt about the application of the Takeovers Code, the Executive should be consulted at the earliest opportunity.

10 April 2019

證監會收購執行人員公開批評郭子華違反《收購守則》規則 21.2 及 22 下的交易限制及交易披露責任

針對郭子華的紀律行動

1. 執行人員公開批評：

郭子華（“郭先生”），原因是他沒有：(i)在要約期內於出售合和實業有限公司的股份之前，尋求執行人員的同意；及(ii)披露他就合和實業有限公司的股份進行的交易，因而違反了《公司收購及合併守則》（“《收購守則》”）規則 21.2 及 22。

郭先生承認他違反了《收購守則》，並同意根據《收購守則》〈引言〉部分第 12.3 項對他採取的紀律行動。

背景及《收購守則》的相關條文

2. 合和實業有限公司（“該公司”）（股份代號：54）自 1972 年起在香港聯合交易所有限公司主板上市。該公司從事物業投資、能源、酒店和餐飲及其他業務。
3. 該公司的要約期在其私有化一事於 2018 年 12 月 4 日首次公布當日展開。2018 年 12 月 5 日，Petrus HK Co Limited（“要約人”）與該公司發出聯合公告，公布以協議安排方式進行私有化的建議的詳情（“聯合公告”），而該公司的要約期亦於同日展開。
4. 要約人是為了私有化建議的目的而成立，及由 Latour HK Co Ltd（“Latour HK”）全資擁有。胡應湘爵士及胡爵士夫人各自於 Latour HK 擁有 50%間接權益¹，及兩人均為 Latour HK 及要約人的董事。
5. 根據私有化建議，每名計劃股東將會就每股計劃股份收取 38.80 元現金。有關私有化建議的計劃文件在 2019 年 2 月 25 日寄發給股東。

《收購守則》的相關條文

6. 規則 21.2 禁止在要約期內進行交易

規則 21.2 規定，“在要約期內，要約人及與其一致行動的人不得出售任何受要約公司的證券，但事先獲得執行人員同意，並在 24 小時前通知公眾可能進行該等出售行動的則例外。……以低於要約的價格進行的出售不會獲得批准……”

7. 規則 22 披露要約期內的交易

¹ Latour HK 的股權架構將會在私有化建議生效前改變，以致胡應湘爵士及胡爵士夫人將繼續於 Latour HK 的 76.15%股權中擁有權益，而餘下的 23.85%股權則由其他人士（包括胡應湘爵士及胡爵士夫人的家人）持有。

《收購守則》規則 22 規定，要約人及其聯繫人須披露在要約期內為其本身或代表全權委託客戶就受要約公司的有關證券（定義見規則 22 註釋 4）進行的交易。

要約人就《收購守則》下的交易限制所採取的措施

8. 2018 年 12 月 5 日，大約在聯合公告刊發之時，胡應湘爵士口頭告知郭先生：
(i) 要約人提出了將該公司私有化的建議；及(ii) 由於郭先生是胡爵士夫人的父親，故他不能買賣該公司的股份，及不能在法院指示召開的股東會議上投票。
9. 2018 年 12 月 7 日，要約人向各名與其一致行動的人發送：
(i) 一份有關《收購守則》規則 22 下的交易披露責任的提示；及(ii) 一封有關注意事項的函件，當中概述一致行動的人在《收購守則》下的責任，包括禁止進行交易。郭先生在同日簽署了認收書，確認收到有關提示及函件。

違反《收購守則》

10. 2018 年 12 月 6 日，即要約期展開後兩天，郭先生在市場上出售了 40,000 股該公司股份，佔該公司已發行股份總數約 0.005%²（“該等交易”）。
11. 截至聯合公告日期，郭先生持有 951,600 股該公司股份，佔該公司股權的 0.11%。在進行該等交易後，郭先生於該公司的權益減少至 911,600 股股份，佔該公司股權的 0.10%。
12. 2019 年 2 月 14 日，要約人得悉該等交易，並通知執行人員。2019 年 2 月 18 日，有關該等交易的權益披露表格被送交給執行人員存檔。

郭先生違反《收購守則》規則 21.2 及 22

13. 郭先生作為胡爵士夫人的父親，是與要約人一致行動的人。因此，他受到《收購守則》規則 21.2 下的交易限制及規則 22 下的交易披露責任所約束。
14. 郭先生處置該公司股份及其後沒有在下一個營業日中午 12 時正之前披露該等交易，違反了《收購守則》規則 21.2 及 22。

執行人員的意見

15. 根據規則 21 對要約人及與其一致行動的人施加的交易限制，是為了保障股東及確保市場公平和信息流通。
16. 同樣地，《收購守則》規則 22 的披露責任旨在闡明在作出要約的關鍵期內，在就受要約公司股份進行交易方面的透明度對市場能否有效率地運作而言至關重要。

² 20,000 股合和股份以每股 34.00 港元出售，另外 20,000 股合和股份以每股 34.20 港元出售。

17. 執行人員在達致對郭先生施加制裁的決定時，特別顧及與要約人一致行動的人可被合理地期望應具備的行為標準及誠信。執行人員要求與要約人一致行動的人盡一切能力遵從《收購守則》，當中可能涉及在有需要時尋求專業意見。
18. 執行人員注意到，郭先生在進行該等交易之前曾經被提醒要留意《收購守則》下的交易限制。要約人的法律顧問亦在聯合公告發表後向他發送了一份有關《收購守則》的規定的提示。郭先生理應知悉《收購守則》的規定，及是他本身的行動導致違反《收購守則》。
19. 儘管執行人員認同郭先生在執行人員審查本事宜上態度合作，但認為本個案的違規情況嚴重，因此有必要採取現時的紀律行動。郭先生已同意根據《收購守則》〈引言〉部分第 12.3 項對他採取的紀律行動。
20. 執行人員希望藉此機會提醒香港證券市場的從業員及有意利用香港證券市場的人士，在進行有關收購和合併的事宜時，應根據《收購守則》遵守適當的操守標準。如對《收購守則》的適用範圍有任何疑問，應盡早諮詢執行人員的意見。

2019年4月10日