

4. Each of Yugang, Y.T. Realty and the Company is listed on The Stock Exchange of Hong Kong Limited. From the public disclosures made by each of the listed companies in the chain, there were no other substantial shareholders; that is shareholders holding 5% or more of the shares in any of these publicly listed companies.
5. As part of a larger group reorganisation, Mr. Cheung was considering an arrangement under which a company controlled by him will purchase the entire issued share capital of Honway at a price equal to the five day average closing price of the shares in the Company held by Honway immediately before the announcement of such a proposed purchase. On completion of this arrangement the shareholding structure would then be as follows:
6. The sale of Y.T. Realty's shareholding in the Company to Mr. Cheung would constitute a connected transaction under the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the "Listing Rules") and would

7. From the representations made to the Panel it was apparent that no consideration had been given to the sale of the controlling interest in the Company to anyone other than Mr. Cheung or a company controlled directly by him and no effort had been made under these arrangements to maximise the value of the shares in the Company through their sale by Y.T. Realty. To the extent that an average market price did not reflect the full value of a controlling interest in the Company, this would impact unfavourably on Y.T. Realty and to a lesser extent Yugang.

The relevant provisions of the Takeovers Code

8. Rule 26.1 of the Takeovers Code requires a general offer to be made in the event that a person acquires 30% or more of the voting rights attaching to the shares of a company to which the Takeovers Code applies, unless such obligation is waived. The relevant part of the Rule states:

“Subject to the granting of a waiver by the Executive, when

- (a) any person acquires, whether by a series of transactions over a period of time or not, 30% or more of the voting rights of a company...*

... 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, and also to the holders of any class of voting non-equity share capital in which such person, or persons acting in concert with him, hold shares (see also Rule 36)....”

9. While Rule 26.1 gives a wide discretion to the Takeovers Executive to waive a general offer obligation, for the majority of cases the criteria used to support the grant of a waiver are set out in Notes 6 and 7 to the Notes to Rule 26.1. In this matter the criteria set out in Note 7 are not relevant. However, since the decision required a detailed consideration of Note 6(a), it is quoted here in full. Note 6(a) and the preamble to the Note read as follows:

“Acquisition of voting rights by members of a group acting in concert

While the Executive accepts that the concept of persons acting in concert recognises a group as being the equivalent of a single person, the general

- (i) *whether the leader of the group or the largest individual shareholding has changed and whether the balance between the shareholdings in the group has changed significantly;*
- (ii) *the price paid for the shares acquired; and*
- (iii) *the relationship between the persons acting in concert and how long they have been acting in concert.*

The Executive would normally grant the acquirer of such voting rights a waiver from such general offer obligation if:–

- (i) *the acquirer is a member of a group of companies comprising a company and its subsidiaries and the acquirer has acquired the voting rights from another member of such group of companies; or*
- (ii) *the acquirer is a member of a group of persons comprising an individual, his close relatives and related trusts, and companies controlled by him, his close relatives or related trusts, and the acquirer has acquired the voting rights from another member of such group of persons.”*

10. In the event that a person acquires statutory control of a first company thereby acquiring or consolidating control of a second company as defined in the Takeovers Code, a general offer may be required, if the holding in the second company is significant in relation to the first. This is referred to in the Takeovers Code as the “chain principle”. In this instance if the arrangement were to be implemented, Mr. Cheung or a company controlled by him will acquire statutory control of Honway, the sole material asset of which is the controlling shareholding in the Company. The chain principle is set out in Note 8 to the Notes to Rule 26.1 and reads as follows:

“Occasionally, a person or group of persons acting in concert acquiring statutory control

“All parties concerned with transactions subject to the Codes are required to co-operate to the fullest extent with the Executive, the Panel and the Takeovers Appeal Committee, and to provide all relevant information.”

The case of Mr. Cheung in summary

12. The first argument was that the arrangements contemplated by Mr. Cheung were those to which a waiver should be granted under Note 6(a)(ii) as it was an arrangement between a group of persons comprising in this case an individual and companies

Accordingly, the Haeco decision is

controlled by him will acquire statutory control of Honway, which holds more than 30% of the voting rights of the Company and Honway has no material assets other than its shareholding in the Company.

27. The second question referred to the Panel is whether a waiver of the general offer obligation should be granted under Note 6(a) to the Notes to Rule 26.1.

28.

33. The payment of a high price can be indicative of a premium being paid for control or for the advantage a sizeable shareholding can confer. This was a factor in the Haeco decision. When a publicly listed company sells a controlling interest in another public company, it would be expected that an effort to obtain a premium for control over and above the market price would be made. In this instance the arrangements do not envisage any premium for control, as Y.T. Realty level is selling a controlling interest in the Company to its own controlling shareholder.
34. The chain of listed companies has been in existence for a number of years and to the extent they are or are deemed to be acting in concert, it is a concert group that has lasted for a relatively long period. There is also no doubt as to who ultimately directs them now. However, the relationship between Mr. Cheung and Y.T. Realty is less direct and less firmly under his control than, for example, Swire Pacific Limited's relationship with Haeco as the chain of control has endured only by the acquiescence of the holders of a majority of the shares in Y.T. Realty and Yugang, the continuation of which is beyond the control of Mr. Cheung.
35. Taking all these factors into account, the Panel agrees with the Takeovers Executive and has decided not to grant the waiver to Mr. Cheung.
36. The Panel was also asked whether it would agree to postpone the publication of its decision for a period of thirty days. As set out in Section 16.1 of the Introduction to the Takeovers Code, irrespective of the outcome of the matter it is the policy of the Panel to publish its rulings and the reasons for them as soon as practicable, so that their activities may be understood by the public. In normal circumstances publication follows within two weeks of a hearing. In the present case, in order to give Mr. Cheung and his advisers time to respond to this decision to the extent that he is still interested in effecting a reorganisation of the listed companies he controls directly or through other controlled companies, it was agreed that this decision will be published no earlier than Monday, 21st December, 2015.

Full cooperation with the Panel

37. In a hearing of this kind the Panel expects that, in compliance with General Principle 10, the party initiating the transaction which is the subject of the hearing would attend the hearing itself, and not through its legal advisers only. Mr. Cheung informed the Panel that he was unable to attend the hearing and there was apparently nobody within his group available to attend the hearing who had any direct knowledge of the arrangements he was contemplating. As an alternative, the managing director of the Company attended, although it soon became apparent that he had no direct knowledge of the arrangements beyond what had been contained in submissions made to the Panel. This was not an entirely satisfactory state of affairs and the Panel would like to place its disappointment in this regard on record.

Parties present at the hearing:

The Takeovers Executive

Woo Kwan Lee & Lo, legal advisers to Mr. Cheung

Mr. John Yeung Hin Chung, Managing Director – The Cross-Harbour (Holdings) Limited

21st December, 2015