

## The Takeovers Appeal Committee

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### In the Appeal Of {X1} and {X2}

### DECISION

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#### Background

1. This is an appeal from a decision of the Takeovers and Mergers Panel ("the Panel") published on 20<sup>th</sup> December 1993 ("the Decision") concerning the activities relating to the takeover of Shun Ho Resources Holdings Limited ("Shun Ho") between November 1988 and June 1991.
2. By reason of the timing of the relevant events, the relevant Code applicable is the 1987 edition of the **Hong Kong Code on Takeovers and Mergers** ("the Code")
3. At the material time, the 1st Appellant, {X1}, was the Executive Director of Mansion House Securities Limited and Managing Director of Mansion House International Limited. The 2<sup>nd</sup> Appellant, {X2}, was a Director of Shun Ho.
4. By reason of their respective positions, and in any event we do not believe it is in dispute, both Appellants were persons to whom the Code applied at the time of the events in question: see para. I of the Introduction to the Code.
5. The relevant events are set out in a List of Agreed and Disputed Findings of Fact which is annexed to this Decision and we will not repeat them here, suffice to say that by the Decision, each of the Appellants was found by the Panel to be in breach of the Code and should be publicly censured.
6. The present appeal was brought under the Code as amended in 1992 ("the 1992 Code") although the Code since then had been revised again in 1994 and 1998. It was agreed by the parties that the 1992 Code was relevant to the question of jurisdiction and procedure to follow as far as this appeal is concerned.

#### Function and Jurisdiction of This Committee

7. The Appellants submitted their respective first submissions in March and in the case of the 1<sup>st</sup> Appellant, again in July 1998. The original grounds of appeal in the case of the 2<sup>nd</sup> Appellant suggested that challenge was being made to the basis of the conviction of the 2<sup>nd</sup> Appellant. The matter was brought before us in October 1998 on a preliminary point as to the extent of our jurisdiction. We ruled that our jurisdiction was confined to reviewing whether any sanction imposed was unfair or excessive and both appeals then proceeded on that basis.
8. However, in view of some of the arguments raised in further submissions by the Appellants, we feel that it is necessary to set out precisely what we consider to be our function and the extent of our jurisdiction.

9. Para. 7.2 of the Introduction to the 1992 Code provides:-

"The Takeovers Appeal Committee reviews disciplinary rulings of the Panel for the sole purpose of determining whether any sanction imposed by the Panel was unfair or excessive based upon the Panel's finding of facts."

10. Para. 13.1 further provides:-

"The jurisdiction of the Takeovers Appeal Committee is limited to reviewing the appropriateness of any sanction imposed by the Panel following a disciplinary proceeding ..."

11. Finally, para. 17.1 further provides:-

"Like the Panel, the Takeovers Appeal Committee directs its own proceedings and may make any inquiries which it considers relevant or appropriate. The Takeovers Appeal Committee will be guided in the way it conducts its proceedings by the procedural rules applicable to hearings of the Panel."

12. In our view, it is plain from the above that our jurisdiction is confined to reviewing the



24.

33. The difficulty here, of course, was that the September 1990 transaction did not in fact breach the Code since Mr. Cheng was already in contravention of Rule 33 way back in November 1988. The position, however, is not any different from what the 1<sup>st</sup> Appellant did in relation to the granting of the option in March 1991. The Panel found as a fact that the 2<sup>nd</sup> Appellant knew the nature of the arrangement he was participating in. The Panel also found that the 2<sup>nd</sup> Appellant was prepared to be involved with what would clearly be a breach of Rule 33 in September 1990 had it not been the peculiar situation that Mr. Cheng was already in breach of the Code in 1988.
34. Furthermore, the Panel also found that the 2<sup>nd</sup> Appellant was also responsible, as a Director of Shun Ho for the offeree document issued in May 1991 which he knew did not comply with the Code. In these circumstances, as in the case of the 1<sup>st</sup> Appellant, the sanction imposed by the Panel was plainly justified.
35. The 2<sup>nd</sup> Appellant 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. In our view, this appeal should also be dismissed.

#### **Form Of The Censure**

36. Finally, the Appellants sought to argue that the publication of the Panel's Decision already amounted to a public censure and thus it was no longer

40. For all these reasons, both appeals are dismissed.

Dated this 25<sup>th</sup> day of March 1999.

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Ronny K.W. Tong, S.C.  
Deputy Chairman

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Mr. Liu Chee Ming

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Mr. Anthony Lo