

TAKEOVERS AND MERGERS PANEL

Panel Decision

In relation to a referral by the Takeovers Executive to the Takeovers and Mergers Panel (the “Panel”) for a ruling on whether Broadford Global Limited (“Broadford”) is permitted under the terms of its possible offer for the ‘H’ Shares in Dalian Port (PDA) Company Limited (the “Company”) set out in its Rule 3.5 possible [offer announcement dated 4th June, 2019](#) (the “Rule 3.5 Announcement”) to deduct the dividend paid on 16th August, 2019 from the offer price in cash of HK\$1.0127 for each ‘H’ Share in the Company, other than ‘H’ Shares owned by or agreed to be acquired by Broadford and parties acting in concert with it.

Purpose of the hearing

1. The Panel met on 11th September, 2019 to consider a referral by the Takeovers Executive under Section 10.1 of the Introduction to the Codes on Takeovers and Mergers and Share Buy-backs (the “**Takeovers Code**”) which relates to a particularly novel, important or difficult point at issue.
2. The Panel was asked to consider whether Broadford may deduct the final dividend declared and paid by the Company in respect of its financial year ended 31st December, 2018 from the amount to be paid to the relevant holders of ‘H’ shares in the Co7 (o)10.L3wT9f in H

6. In an [announcement by the Company dated 2nd June, 2019](#) and the Rule 3.5 Announcement it was announced that it was proposed that Liaoning SASAC will transfer a 1.1% equity interest in Liaoning Port Group to Broadford for a nil consideration (the “**Transfer**”). The Transfer was subject to a number of pre-conditions being (i) the approval of the Transfer by SASAC and the indirect acquisition of the shares in the Company, as they are listed shares; (ii) the approval of the Transfer by the relevant regulatory authorities.

on behalf of Broadford was from the outset almost

16. While Note 3 to Rule 26.3 refers only to a specific circumstance when an offeror is permitted to deduct a dividend from the price paid for shares in an offeree company to determine the highest price paid for the shares in order to establish the level of a cash offer, the Note does support the notion that there may be other circumstances when the deduction of a dividend from the offer price may be appropriate, although the Takeovers Code does not

Comparisons with the Maanshan transaction

24. At around the same time as the publication of the Rule 3.5 Announcement, a similar transaction between Baosteel Hong Kong Investment Company Limited ("**Baosteel**") and Maanshan Iron & Steel Company Limited ("**Maanshan**") was announced, under which 51% of the holding company of Maanshan, holding 45.54% of its share capital, was to be transferred to Baosteel for a nil consideration. When the transaction was first announced on 2nd June, 2019 in accordance with Rule 3.7 no indicative offer price was mentioned, although at that time the shares in Maanshan were trading cum the entitlement to a final dividend in respect of its 2018 financial year.
25. Following the [decision of the Panel](#) which ruled on 19th June, 2019 that the proposed transaction on completion will give rise to a mandatory general offer obligation for Baosteel, it publica

35. The Takeovers Executive does not believe that its position is equivalent to compelling the offeror to increase its offer. Its position does not increase the offer in any way. The offer price was stated clearly in the announcement and the market has traded on this basis. While the Takeovers Executive has sympathy with the predicament in which Broadford finds itself and this will increase the cost of its offer, this could have been avoided had Broadford considered the issue and raised it with the Takeovers Executive before it published the Rule 3.5 Announcement.
36. Lastly, on the questions of what the net dividend should be, were a deduction of the final dividend to be permitted by the Panel, the Takeovers Executive considered that the net dividend should be 90% of the gross dividend per 'H' S Tc du[t9e

tax on behalf of certain shareholders. Any deduction for taxes would require the offeror to know the tax status of individual shareholders and it was in no position to do this.

The Panel's decision and its reasons for it

44. Note 3 to Rule 26.3 applies specifically to the determination of the highest price paid by the offeror, when accepting shareholders are entitled under the offer to retain a dividend declared by the offeree company. While it may indicate that the Takeovers Code accepts the concept that a dividend may be deducted in certain circumstance when establishing an offer price, it does not give an offeror any general right to deduct a dividend from its offer price in any other circumstance other than in establishing the highest price paid by an offeror and it certainly does not permit such a deduction without prior consultation with the Takeovers Executive. Broadford could not, therefore, rely on the provisions of the

Linklaters – Legal advisers to Broadford

China International Capital Corporation Hong Kong Securities Limited – Financial advisers to Broadford

Freshfields Bruckhaus Deringer – Legal advisers to China International Capital Corporation Hong Kong Securities Limited

The Company

Paul Hastings – Legal advisers to the Company