

TAKEOVERS AND MERGERS PANEL

Panel Decision

In relation to a referral to the Takeovers and Mergers Panel (the “Panel”) by the Executive for a ruling on whether SouthGobi Resources Limited (“SouthGobi”, stock code 1878) should be considered a “public company in Hong Kong” within the meaning of the Codes on Takeovers and Mergers and Share Buy-backs (the “Codes”)

Introduction

1. The Panel met on 19 June 2014 to consider a referral by the Executive under section 10.1 of the Introduction to the Codes as the Executive considered there to be particularly novel, important or difficult points at issue.
2. The Panel was asked to determine whether SouthGobi should be considered a “public company in Hong Kong” within the meaning of section 4.2 of the Introduction to the Codes in light of changes to the information and/or re(i)5(n)13(f)-4(orm)-5(a)13(t)-4(i)5(on)3()-4(an..)8(r)-34ntar952

8. In May 2014, SouthGobi approached the Executive regarding whether SouthGobi should continue to be regarded as not being a public company in Hong Kong for the purposes of the Codes. On 4 June 2014, SouthGobi applied to the Executive for a ruling that it is not a public company in Hong Kong for the purposes of the Codes. The matter was referred to the Panel by the Executive under section 10.1 of the Introduction to the Codes as the Executive considered there to be particularly novel, important or difficult points at issue.

The relevant provisions of the Codes

9. Section 4.1 of the Introduction to the Codes states:

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shareholders – the greater the level of connection, the more likely it is that the Codes should apply.

14. A company with a secondary listing on the SEHK must, by definition, also have a primary listing overseas and in deciding whether or not to apply the Codes to such a company, the Executive will also take into account whether alternative protection is available to Hong Kong investors under factor (c).
15. The Executive did not agree with the suggestion made by Turquoise Hill that following a ruling that the Codes do not apply to a secondary listed company, the main factor to determine whether that status has changed is the continuance of shareholder protection in the primary listing market and the other factors should only be considered in extreme cases. The

listed companies that do not have a secondary st

period exceed the average volumes of shares traded on the SEHK. In addition, over the same period, the total number of shares traded on the TSX exceeds the total number of shares traded on the SEHK.

36. SouthGobi asserted that the extent of share trading in Hong Kong should not be limited to the relative percentages of trading on the TSX and the SEHK which it opined is just a product of liquidity. Overall volumes of trading should be considered. SouthGobi submitted that the volume of trading in

39. The Canadian takeovers regime affords a “private agreement” exemption which in essence would allow a party to acquire 20% or more of the shares in SouthGobi without such party being required to make a general offer to all shareholders provided certain parameters are met, including the purchase price not exceeding 115% of the market price and the number of sellers not exceeding 5. The “private agreement” exemption was disclosed in the prospectus

the case that the main factor to determine whether that status has changed is the continuance of the shareholder protections in the market where such company has its primary listing.

48. In determining whether a company is a “public company in Hong Kong” for the purposes of the Codes, section 4.2 of the Introduction to the Codes states that the primary factors to be taken into account are the number of Hong Kong shareholders and the extent of share trading in Hong Kong. The 2011 Panel decision in the Husky Energy case confirmed that these two factors are the primary factors to be considered.

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the past six months, the monthly trading volume in Hong Kong has ranged between 72% and 96% of total trading in the shares. There has been a clear and material shift in the relative proportion of trading volume from Canada towards Hong Kong compared with the estimate provided in the Pre-Listing Application.

53. In addition to the above primary factors, section 4.2 of the Introduction to the Codes states that other factors are to be taken into account including:

(a)

59. The Panel authorized that the fact that the Panel had decided that the Codes now apply to SouthGobi could be contained in an announcement to be issued by SouthGobi on the SEHK in advance of publication of this decision if the directors of SouthGobi consider the decision to be price sensitive information concerning SouthGobi.

24 June 2014

Parties present at the hearing:

The Takeovers Executive

SouthGobi Resources Limited, advised by Dorsey & Whitney

Turquoise Hill Resources Limited, advised by Norton Rose Fulbright