

TAKEOVERS AND MERGERS PANEL

**Panel Decision in Relation to a Proposed Partial Offer
for Kong Wah Holdings Limited ("Kong Wah")**

assumption that no minority shareholders accepted the proposed offer. On the assumption that all the existing shareholders of Kong Wah accepted the offer in full in

the practice in London. The Panel considered that it should use the discretion conferred

Since the Panel refused its consent to the application, it was unnecessary for the Panel to rule on the other points of interpretation of Rule 28 raised by the applicant, although it was also noted that, if consent had been granted, the proposal would also have required waivers from two other sections of Rule 28.

3 July 1995

Encls

Extracts from Hong Kong Code on Takeovers & Mergers

28. Partial offers

28.1 Executive's consent required

~~The Executive's consent is required for a partial offer~~

case of an offer which could not result in the offeror and persons acting in concert with it holding 35% or more of the voting rights of a company, consent will normally be granted

28.2 Acquisitions prior to the offer

50% of the voting rights of a company, consent will not normally be granted.

28.5 Offer for 35% or more requires independent approval

Any offer which could result in the offeror holding 35% or more of the voting rights of a company must normally be conditional, not only on the specified number of acceptances being received, but also on approval of the offer, signified by means of a separate

box on the form of acceptance, being given by shareholders holding over 50% of the voting rights not held by the offeror and

persons acting in concert with it. This requirement may be waived if over 50% of the voting rights of the offeree company are held

by one shareholder.

28.6 Control position warning

In the case of a partial offer which could result in the offeror holding more than 50% of the voting rights of the offeree company, the offer document must contain specific and prominent reference to this and to the fact that, if the offer succeeds, the offeror will be free, subject to this Rule, to acquire further shares without incurring any obligation to make a general offer.

28.7 Precise number of shares to be stated

A partial offer must be made for a precise number of shares, such number must be stated, and the offer may not be declared unconditional as to acceptances unless acceptances are received for not less than that number.

as a shareholder in the same proportion as the

the total number of shares for which he has offered.

28.9 Comparable offer

When an offer is made for a company with more than one class of equity share capital which could result in the offeror holding shares carrying 35% or more of the voting rights, a comparable offer must be made for each other class

Extracts from former Takeovers Code

36. (1) For the purposes of this rule:—

- (a) 'offeror' shall be deemed to include persons acting in concert with the offeror;
- (b) the announcement or making of an offer which would result in the offeror's holding shares carrying less than 35% of the voting rights in an offeree company does not require the prior approval of the Committee;
- (c) ~~the announcement or making of an offer which would result in the~~

such offer must also be conditional on approval of the offer

Extracts from former Takeovers Code

[REDACTED]

[REDACTED]

Rule 36

Factors which the Committee will take into

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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Extracts from City Code

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SECTION O. PARTIAL OFFERS

RULE 36

36.1 PANEL'S CONSENT REQUIRED

The Panel's consent is required for any partial offer. In the case of

carrying 30% or more of the voting rights of a company, consent will normally be granted.

36.2 BUYING BEFORE THE OFFER

shares carrying 30% or more but less than 100% of the voting rights of a company, such consent will not normally be granted if the offeror or persons acting in concert with it have acquired, selectively or in significant numbers, shares in the offeree company during the 12 months preceding the application for consent or if shares have been purchased at any time after the

O2

RULE 36 CONTINUED

When an offer is made which could result in the offeror holding shares carrying not less than 30% and not more than 50% of the

of the offeror's shares and the offer may not be declared unconditional

O3

RULE 36 CONTINUED

NOTES ON RULE 36

1. Allotted but unissued shares

When shares of a company carrying voting rights have been allotted (even if provisionally) but have not yet been issued, for example, under a rights issue when the shares are represented by renounceable letters of allotment, the Panel should be consulted. It is likely that such shares, and the acquisition of such shares, will be taken into account for the purpose of this Rule.

2. Dual consideration offers for 100%

If a certain consideration is offered for part of each shareholder's holding and a lower consideration for the balance, such an offer may be treated as a form of partial offer in spite of the fact that the offer is being made for all voting equity share capital not already held. Rule 36.5 may apply and the Panel's consent must be sought if any such offer is contemplated.