

## TAKEOVERS AND MERGERS PANEL

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**Panel Decision**

Although she was prepared to accept the Executive's Ruling that a concert party had been formed, Madame Cheong informed the Executive shortly after its Ruling, that she was unable to secure the necessary financing for a general offer. The Executive therefore proposed to impose an immediate order denying Madame Cheong, Dr. Hendra, Fortune Grand and any private companies directly or indirectly controlled by them, access to the securities markets for a period of 12 months (a "**cold shoulder order**"). In response, it was proposed that a general offer would be made at \$0.08 per share within 12 months from the date of any Panel ruling, failing which, Madame Cheong and her related parties would be subject to a cold shoulder order for a period of 12 months (the "**Proposal**"). The Executive agreed to the Proposal. However, as a deferred general offer was novel in Hong Kong, the Executive referred the Proposal to the Panel for endorsement.

### **Panel's Decision**

The Panel considered the written submissions of the Executive, Madam Cheong and Dr. Hendra's letter dated 7 May 1999. The Panel noted that Madame Cheong and Dr. Hendra had both formally indicated their acceptance of the Proposal. Madam Cheong and Dr. Hendra had both declined to attend the Panel hearing and were jointly represented by their legal adviser who made opening and closing submissions on their behalf and addressed such questions posed to him by members of the Panel as he was able to answer.

The Panel noted that Section 12.2 of the Introduction to the current version of the Code, empowers the Executive to deal with a disciplinary matter if the party to be disciplined agrees to the disciplinary action proposed by the Executive. The Panel further noted that this matter had been referred to it for the specific purpose of it considering whether or not to endorse the Proposal. Although the Panel had asked various questions to clarify the background to this matter, it had based its deliberations on the premise that there was no application before it challenging the Executive's Ruling. In such circumstances, the Panel wished to emphasise that it had strictly limited its enquiries to whether the Proposal was appropriate or not based on the Executive's Ruling.

The Panel ruled that any general offer should not be deferred but made immediately. In reaching this decision, the Panel took into account :

1. the Executive's ruling, which involved the breach of a core provision of the Code;
2. the considerable period of time that had already passed since the Proposal was agreed upon by the Executive and Madame Cheong; and

3. that no satisfactory grounds had been put forward to support the deferral of any general offer in this case.

## **Rule 26.1 of the pre-August 1998 version of the Code**

### **26 Mandatory offer**

#### 26.1 When mandatory offer required

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, 35% or more of the voting rights of a company;
- (b) two or more persons are acting in concert, and they collectively hold less than 35% of the voting rights of a company, and any one or more of them acquires voting rights and such acquisition has the effect of increasing their collective holding of voting rights to 35% or more of the voting rights of the company;
- (c) any person holds not less than 35%, but not more than 50%, of the voting rights of a company and that person acquires additional voting rights and such acquisition has the effect of increasing that person's holding of voting rights of the company by more than 5% from the lowest percentage holding of that person in the 12 month period ending on and inclusive of the date of the relevant acquisition; or
- (d) two or more persons are acting in concert, and they collectively hold not less than 35%, but not more than 50%, of the voting rights of a company, and any one or more of them acquires additional voting rights and such acquisition has the effect of increasing their collective holding of voting rights of the company



