SFC publicly censures Zheng Dunmu and imposes a cold-shoulder order for breach of the Takeovers Code

22 Nov 2016

The Securities and Futures Commission (SFC) has publicly censured and imposed a 24-month cold-shoulder order (Note 1) against Zheng Dunmu for breaching the mandatory general offer obligation of the Takeovers Code (Note 2).

At the relevant time, Zheng was chairman, executive director and a controlling shareholder of Changgang Dunxin Enterprise Company Limited and held a 56.25% interest in Changgang Dunxin indirectly through three companies wholly owned by him. Part of this interest was pledged to a lender as collateral for a loan.

On 23 February 2015, the lender sold the pledged shares, reducing Zheng's indirect interest in Changgang Dunxin to 46.18%. Shortly after becoming aware of the disposals, Zheng personally acquired 1.01% and 2.97% of Changgang Dunxin on 26 and 27 February respectively. A mandatory general offer obligation under the Takeovers Code was triggered on 27 February as Zheng increased his interest in Changgang Dunxin to 50.16%, but no offer was made.

Zheng told the Executive (Note 3) that he was not aware of the mandatory general offer obligation. He accepts that he has breached the Takeovers Code and deprived Changgang Dunxin's shareholders of the right to receive a general offer for their shares. Zheng agreed to the current disciplinary action against him.

"Directors of a listed company must use the best of their abilities to comply with the Takeovers Code and seek professional advice as and when needed", said Mr Brian Ho, the SFC's Executive Director of Corporate Finance. "Zheng's conduct fell short of the standards expected and disregarded one of the most fundamental provisions of the Takeovers Code. This merits strong disciplinary action."

A copy of the Executive Statement is available on the SFC website (Note 4).

End

Notes:

1. Zheng will be denied direct or indirect access to the Hong Kong securities market for a period of 24 months commencing on 22 November 2016 to 21 November 2018.
2. The Code on Takeovers and Mergers.
3. The Executive Director of the SFC's Corporate Finance Division or his delegate.
4. The statement can be found in the "Executive decisions and statements" section of the SFC website at www.sfc.hk.

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Takeovers Executive of the SFC sanctions Mr Zheng Dunmu for breaching Rule 26.1 of the Takeovers Code

Sanctions

1. The SFC today publicly censures and imposes a 24-month cold-shoulder order against Mr Zheng Dunmu ("**Mr Zheng**") for breaching the mandatory general offer obligation under Rule 26.1 of the Code on Takeovers and Mergers ("**Takeovers Code**"). Mr Zheng will be denied direct or indirect access to the Hong Kong securities market for a period of 24 months commencing on 22 November 2016 to 21 November 2018.

Background and key facts

2. Mr Zheng is the founder of Changgang Dunxin Enterprise Company Limited ("**Changgang Dunxin**") and at the relevant times, he was also its controlling shareholder, the chairman and an executive director. Changgang Dunxin has been listed on the Main Board of the Hong Kong Stock Exchange since 26 June 2014. Trading of its shares has been suspended since 20 January 2016 due to, amongst other things, the discovery of irregularities in share certificates by its Hong Kong branch share registrar.

3. As at 3 February 2015, Mr Zheng was interested in 56.25% of Changgang Dunxin. These shares were held through three companies wholly-owned by Mr Zheng, namely Pure Sheen Limited ("**Pure Sheen**"), Radiant Path Limited ("**Radiant Path**") and Radiant Prestige Limited ("**Radiant Prestige**") as to 48.75%, 3.75% and 3.75% respectively. Mr Zheng, Pure Sheen, Radiant Path and Radiant Prestige ("**Concert Group**") are concert parties for the purposes of the Takeovers Code.

4. On 3 February 2015, Mr Zheng, on behalf of Pure Sheen, entered into a stock secured financing arrangement with a third party ("**Lender**") for a loan granted to Pure Sheen ("**Financing Agreement**"). Pure Sheen then pledged 10.07% of its interest in Changgang Dunxin as collateral for the loan ("**Pledged Securities**").

5. On 23 February 2015, the Lender sold the Pledged Securities ("**Disposals**"). As a result, Pure Sheen's interest in Changgang Dunxin reduced from 48.75% to 38.68% and the Concert Group's interest in Changgang Dunxin dropped from 56.25% to 46.18%.

6. Shortly after becoming aware of the Disposals, Mr Zheng personally acquired 1.01% and 2.97% of Changgang Dunxin on-market and off-market on 26 and 27 February 2015 respectively ("**Acquisitions**"). As a result of the Acquisitions, the Concert Group's interest increased from 46.18% to 47.18% on 26 February 2015 and crossed the 2% creeper on 27 February 2015 when the Concert Group's interest increased further to 50.16%, triggering a mandatory general offer. According to publicly available information, the Concert Group's interest in Changgang Dunxin as at 18 November 2016 was below 30%.

7. Mr Zheng, through Changgang Dunxin's compliance adviser, informed the Executive of the Acquisitions on 5 March 2015. Upon becoming aware of the Acquisitions, the Executive reminded Mr Zheng of the mandatory general offer

requirement under Rule 26.1 of the Takeovers Code and urged Mr Zheng to comply with the Takeovers Code forthwith. In an announcement issued by Changgang Dunxin on 20 March 2015, Mr Zheng confirmed, among other things, that he did not have sufficient financial resources to make a general offer for Changgang Dunxin.

Relevant provisions of the Takeovers Code and discussion

8. Rule 26.1 of the Takeovers Code provides that:

"*Subject to the granting of a waiver by the Executive, when…*

(d) two or more persons are acting in concert, and they collectively hold not less than 30%, 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 by more than 2% from the lowest collective percentage holding of such persons in the 12 month period ending on and inclusive of the date of the relevant acquisition;

that person shall extend offers, on the basis set out in this Rule 26, to the holders of each class of equity share capital of the company, whether the class carries voting rights or not…"

9. It follows that a mandatory general offer obligation was triggered on 27 February 2015 when the Concert Group's interest increased to 50.16% from 46.18% being the lowest percentage holding in the preceding 12-month period. No general offer has been made.

Sanctions against Mr Zheng

10. The Executive has carefully considered the evidence in this case including Mr Zheng's representations. Mr Zheng submitted that he was misled into signing the Financing Agreement without proper legal advice and that the Lender disposed of the Pledged Securities wrongfully. Mr Zheng also informed the Executive that he was not aware of the general offer obligation under the Takeovers Code at the time of the Acquisitions. However, he accepts that he has breached Rule 26.1(d) of the Takeovers Code and deprived Changgang Dunxin's shareholders of the right to receive a general offer for their shares.

11. The Executive expects directors of a listed company to use the best of their abilities to comply with the Takeovers Code which may involve seeking professional advice as and when needed and, in some instances, consulting the Executive prior to a course of action. Mr Zheng fell short of the standards expected of him and failed to seek advice or consult the Executive before the Acquisitions. Mr Zheng's conduct in this matter amounts to a disregard of one of the most fundamental provisions of the Takeovers Code which merits strong disciplinary action. Mr Zheng has accepted the disciplinary action taken against him under section 12.3 of the Introduction of the Takeovers Code.

12. The Executive takes this opportunity to remind practitioners and parties who wish to take advantage of the securities markets in Hong Kong that they should conduct themselves in matters relating to takeovers, mergers and share buy-

backs in accordance with the Takeovers Code. If they do not, they may find by way of sanction, that the facilities of such markets are withheld in order to protect those who participate in Hong Kong's securities markets.

22 November 2016

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SECURITIES AND FUTURES COMMISSION

Order pursuant to section 12 of the Introduction to the Hong Kong Codes on Takeovers and Mergers and Share Buy-backs

Mr Zheng Dunmu

The Executive Director of the Corporate Finance Decision of the SFC (“Executive Director”) hereby REQUIRES that all licensed corporations, licensed representatives, registered institutions within the meaning of the Securities and Futures Ordinance (Cap. 571) and relevant individuals within the meaning of section 20(10) of the Banking Ordinance (Cap. 155) shall not, without the prior consent of the Executive in writing:

- act or continue to act directly or indirectly in their capacity as licensed corporations, licensed representatives and registered institutions or relevant individuals for Mr Zheng Dunmu or any corporation controlled by him (as defined in the Hong Kong Codes on Takeovers and Mergers and Share Buy-backs); or

- knowingly assist directly or indirectly in a breach of this Order;

during the period commencing on 22 November 2016 and ending on 21 November 2018.

BY ORDER

Brian Ho

Executive Director

22 November 2016