

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

30 Jul 2018

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

At the time of the breach Liang held senior positions in three principal subsidiaries and four partnerships of Silver Base Group Holdings Limited (Silver Base) (Note 3). As at 23 July 2017, Liang did not hold any interest in Silver Base whilst his brother and his brother's family trust, being Liang's concert parties, held in aggregate 43.83%. Liang acquired shares in Silver Base on-market and by 31 July 2017 his own and his concert parties' shareholding in Silver Base increased from 43.83% to 45.87%, triggering a mandatory offer obligation under Rule 26.1(d) of the Takeovers Code. No such offer was made.

Liang told the Executive (Note 4) that the acquisitions were inadvertent mistakes due to his ignorance of the Takeovers Code. He accepted that he has breached the Takeovers Code and deprived Silver Base's shareholders of the right to receive a general offer for their shares. Liang agreed to the current disciplinary action against him.

Parties who wish to take advantage of the securities markets in Hong Kong should conduct themselves in matters relating to takeovers, mergers and share buy-backs in accordance with the Takeovers Code. Liang's conduct fell short of the expected standards and disregarded one of the most fundamental provisions of the Takeovers Code. This merits strong disciplinary action.

The [Executive Statement](#) can be found under the "[Listings & takeovers – Takeovers and mergers – Decisions & statements – Executive decisions and statements](#)" of the SFC website.

End

Notes:

1. Liang will be denied direct or indirect access to the Hong Kong securities market for a period of 24 months commencing on 30 July 2018 to 29 July 2020.
2. The Code on Takeovers and Mergers.
3. Silver Base has been listed on the Main Board of The Stock Exchange of Hong Kong Limited since 8 April 2009.
4. The Executive Director of the SFC's Corporate Finance Division or his delegate.

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Takeovers Executive of the SFC sanctions Mr Liang Guosheng 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 Liang Guosheng (“**Mr GS Liang**”) for breaching the mandatory general offer obligation under Rule 26.1 of the Code on Takeovers and Mergers (“**Takeovers Code**”). Mr GS Liang will be denied direct or indirect access to the Hong Kong securities market for a period of 24 months commencing on 30 July 2018 to 29 July 2020.

Background and key facts

2. Silver Base Group Holdings Limited (“**Silver Base**”) has been listed on the Main Board of The Stock Exchange of Hong Kong Limited since 8 April 2009. Given that Mr GS Liang is the brother of Mr Liang Guoxing, the Chairman, an executive director and a controlling shareholder of Silver Base (“**Chairman Liang**”), Mr GS Liang and Chairman Liang are presumed to be acting in concert under Class (8) of the definition of “acting in concert” under the Takeovers Code.
3. At the time of the breach Mr GS Liang held senior positions in three out of eight wholly-owned principal subsidiaries of Silver Base. He was the legal representative, executive director and general manager of Shenzhen Silver Base Wine Kingdom Sales Management Co. Ltd, deputy chairman and general manager of Silver Base Wine & Spirit (Shenzhen) Co. Ltd, and director of Silver Base Trading and Development (Shenzhen) Co. Limited. Mr GS Liang was also the trustee and the sole general and executive partner of four partnerships of Silver Base which were accounted for as its subsidiaries for accounting purposes.
4. As at 23 July 2017, Mr GS Liang did not hold any interest in Silver Base whilst Chairman Liang and his family trust¹ held in aggregate 43.83%.
5. In late July 2017, Mr GS Liang acquired shares in Silver Base on-market and by 31 July 2017 had acquired in aggregate 46,461,000 Silver Base shares at an average price of HK\$0.51 per share (“**Acquisitions**”). As a result the collective holding of the concert group, consisting of Chairman Liang, his family trust and Mr GS Liang (the “**Concert Group**”), increased from 43.83% to 45.87%. A mandatory general offer was triggered as the Concert Group’s aggregate interest in Silver Base had increased by more than 2% from its lowest collective percentage interest of 43.83% in the 12 months prior to 31 July 2017. No general offer was made.
6. Chairman Liang has stated that he was not aware of the Acquisitions at the time they were made. Mr GS Liang has confirmed that the Acquisitions were his personal decision and investment and he had not informed or consulted Chairman Liang prior to making the Acquisitions. Mr GS Liang has confirmed that he was fully aware that Chairman Liang was the Chairman, an executive director and a controlling shareholder of Silver Base.

¹ The Silver Base shares are held by Yinji Investments Limited which is indirectly owned by a discretionary trust, the beneficiaries of which are Chairman Liang, his spouse and daughter

7. Mr GS Liang has accepted that he breached Rule 26.1(d) of the Takeovers Code and deprived Silver Base's shareholders of the right to receive a general offer for their shares. He sincerely apologised for the breach and claimed that at the time of the Acquisitions he was unaware of the mandatory general offer requirements under the Takeovers Code.

Relevant provision of the Takeovers Code

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 31 July 2017 but no general offer has been made in breach of Rule 26.1(d) of the Takeovers Code.

Sanctions against Mr GS Liang

10. The Executive has carefully considered the evidence in this case including Mr GS Liang's apology and his acceptance that he has breached Rule 26.1(d) of the Takeovers Code.
11. Rule 26.1 is one of the most fundamental provisions in the Takeovers Code. Mr GS Liang knew that Chairman Liang was the Chairman, an executive director and a controlling shareholder of Silver Base. At the time of the breach, Mr GS Liang himself was a member of the senior management of three principal subsidiaries and four partnerships of Silver Base and he has dealt in the securities market in Hong Kong. He should have appreciated the implications of the Acquisitions on the Takeovers Code and should have made necessary enquiries and sought professional advice before making the Acquisitions.
12. The Executive also expects concert parties of controlling shareholders to comply with the Takeovers Code to use the best of his or her ability, including seeking professional advice as and when needed. In case of doubt, the Executive should be consulted at the earliest opportunity.
13. Mr GS Liang's conduct fell short of the standards expected of him and amounts to a disregard of the Takeovers Code which merits strong disciplinary action. Mr GS Liang has accepted the disciplinary action taken against him under section 12.3 of the Introduction of the Takeovers Code.

14. 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 and the Share Buy-backs 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.

30 July 2018

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 Liang Guosheng

The Senior Director of the Corporate Finance Division of the SFC ("Senior 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 Liang Guosheng 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 30 July 2018 and ending on 29 July 2020.

BY ORDER



Megan Tang

Senior Director

30 July 2018