

SFC publicly censures So Yuk Kwan and imposes a cold-shoulder order for breach of the Takeovers Code

15 Oct 2020

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

So was the chairman, executive director and chief executive officer of AV Concept Holdings Limited when the breaches took place. In 2016, So advanced loans to a borrower, who transferred 25,000,000 shares in AV Concept to So's nominee on 8 June 2017 as repayment. As a result of the transfer, So's interest in AV Concept increased from 2.38% to 5.61% while the interest of So and his concert parties (Concert Group) increased from 35.61% to 38.84%.

The Concert Group continued to acquire shares in AV Concept up until 27 April 2018 and these acquisitions were also in excess of the 2% creeper.

So told the Executive (Note 3) that he was unaware that the shares held by his nominee would count as his own interest under the Takeovers Code. He accepted that he has breached the Takeovers Code and deprived AV Concept's shareholders of the right to receive a general offer for their shares. So 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. So's conduct fell short of the expected standards and disregarded one of the most fundamental provisions of the Takeovers Code. This merits the present disciplinary action.

The [Executive Statement](#) can be found in the "[Corporates – Takeovers and mergers – Decisions and statements – Executive decisions and statements](#)" section of the SFC website.

End

Notes:

- a. So will be denied direct or indirect access to the Hong Kong securities market for a period of 24 months commencing on 15 October 2020 to 14 October

2022.

- b. The Code on Takeovers and Mergers.
- c. The Executive Director of the SFC' s Corporate Finance Division or his delegate.
- d. The voluntary general offer for AV Concept which closed on 16 March 2020 was made by So voluntarily and not in remedy for the breaches under the Takeovers Code.

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Takeovers Executive of the SFC sanctions Dr So Yuk Kwan 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 Dr So Yuk Kwan (“**Dr So**”) for breaching the mandatory general offer obligation under Rule 26.1 of the Code on Takeovers and Mergers (“**Takeovers Code**”). Dr So will be denied direct or indirect access to the Hong Kong securities market for a period of 24 months commencing on 15 October 2020 to 14 October 2022.

Background and key facts

2. AV Concept Holdings Limited (“**AV Concept**” or “**Company**”) has been listed on the Main Board of the Stock Exchange of Hong Kong Limited since April 1996. AV Concept was founded by Dr So, who is also its chairman, executive director and chief executive officer.
3. On 25 July 2016 and 6 September 2016, Dr So advanced two loans to **Mr Ng Chung Wai (“Mr Ng”)** in the aggregate amount of US\$4.05 million (approximately HK\$31.59 million) (“**Loan**”). In October 2016, Mr Ng repaid part of the Loan in cash by transferring US\$2.45 million (approximately HK\$19.11 million) to Dr So and his son.
4. On 8 June 2017, **Mr Ng settled the remainder of the Loan by transferring 25,000,000 shares in AV Concept (“Subject Shares”) to a nominee of Dr So at the consideration of HK\$14 million or HK\$0.56 per share (“Transfer”). The Subject Shares were held on trust by Dr So’s nominee on behalf of Dr So and represented 3.23% of AV Concept’s then issued share capital.**
5. Upon completion of the Transfer, Dr So’s interest in AV Concept increased from 2.38% to 5.61% while the interest of Dr So and his concert parties (“**Concert Group**”) increased from 35.61% to 38.84%. As a result of the Transfer, a mandatory general offer obligation was triggered as the Concert Group’s aggregate interest in AV Concept increased by more than 2% from its lowest collective percentage interest of 33.67% in the 12 months prior to 8 June 2017.
6. Following this, the Concert Group continued to acquire and dispose of shares between 19 October 2017 and 27 April 2018, and its aggregate interest reached 40.81% on 27 April 2018, being the Concert Group’s highest shareholding in AV Concept prior to the commencement of a voluntary general offer made by Dr So for the Company on 21 February 2020 (“**VGO**”).
7. Between 8 June 2017 and 27 April 2018, there were 20 instances where the Concert Group’s interest in AV Concept increased by more than 2% from the lowest collective percentage interest in the 12-month period prior to the respective acquisitions.
8. Dr So accepted that he has breached Rule 26.1(d) of the Takeovers Code and deprived AV Concept’s shareholders of the right to receive a general offer for their shares. **Dr So sincerely apologised for the breach and claimed that he was**

unaware that the shares held by his nominee on trust for him would count as his own interest under the Takeovers Code.

Relevant provision of the Takeovers Code

9. 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...”

It follows that Dr So not only triggered a mandatory general offer obligation in respect of AV Concept on 8 June 2017 but also in each of the subsequent 19 instances between 19 October 2017 to 27 April 2018, and no general offer was made. He therefore breached Rule 26.1(d) of the Takeovers Code¹.

Sanctions against Dr So

10. The Executive has carefully considered the evidence in this case including Dr So'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. The Executive expects persons who are actively engaged in the securities market to comply with the Takeovers Code which includes seeking professional advice as and when needed. This is particularly the case in respect of a listed company director who must use the best of his or her abilities to comply with the Takeovers Code. In case of doubt, the Executive should be consulted at the earliest opportunity before embarking on a course of action which might have implications under the Takeovers Code.
12. Dr So's conduct fell short of the standards expected of him and disregarded the Takeovers Code which merits strong disciplinary action. Dr So has accepted the disciplinary action taken against him under section 12.3 of the Introduction to the Takeovers Code.

¹ The Executive notes that Dr So made a VGO at HK\$0.35 per share which closed on 16 March 2020. However, the general offer was made by Dr So on a voluntary basis and not in remedy for the breaches of Rule 26.1 of the Takeovers Code as described in this statement.

13. 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. Otherwise, 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.

15 October 2020

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**

Dr So Yuk Kwan

The Acting Executive Director of the Corporate Finance Division of the Securities and Futures Commission (“**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 Dr So Yuk Kwan or any corporation controlled by him (as defined in the Hong Kong Codes on Takeovers and Mergers and Share Buy-backs) other than AV Concept Holdings Limited and its subsidiaries (within the meaning of 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 15 October 2020 and ending on 14 October 2022.

BY ORDER



Megan Tang

Acting Executive Director

15 October 2020