

Takeovers and Mergers Panel Disciplinary Decision - South East Group Limited (formerly Benelux International Limited)

24 May 1999

On Friday 21 May 1999 the Takeovers Panel ruled that Madame Cheong Swee Kheng ("Madame Cheong"), Dr. Hendra Rahardja ("Dr. Hendra") and Fortune Grand Investment Limited (the "parties") make an immediate mandatory cash offer at \$0.08 per share for shares in South East Group. (Fortune Grand Investment Limited ("Fortune Grand") is owned as to 80% by Dr. Hendra, 10% by Madame Cheong and 10% by a close relative of Dr. Hendra). The Panel also ruled that if the parties fail to make a general offer within 3 months of its ruling, the Panel will immediately impose an 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).

The background to this matter is that in May 1998, the Executive ruled that in April 1998, a general offer obligation had been triggered under the provisions of Rule 26.1 of the Hong Kong Code on Takeovers and Mergers ("Code") in circumstances contemplated within Note 7 to Rule 26.1. This ruling was made on the basis that a concert party had been formed at that time consisting of Madam Cheong (who was acting in concert with Fortune Grand and Dr. Hendra) and Mr. Kwee Cahyadi Kumala (acting in concert with Prestbury Incorporated, a company owned by him and the vendor of part only of a shareholding in South East Group) and that their aggregate shareholding in the South East Group exceeded the 35% threshold imposed by the Code. At the time, Madame Cheong informed the Executive that she was unable to secure the necessary financing for a general offer. The Executive therefore proposed to impose an immediate cold shoulder order for a period of 12 months. In response, Madame Cheong proposed to undertake the making of a general offer 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 (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.

In reaching its decision, the Panel stressed that the general offer should not be deferred but made immediately. The Panel was however prepared to allow a grace period of 3 months before imposing the cold shoulder order. The parties have 7 days from the receipt of the Panel's written reasons within which to apply to the Takeovers Appeal Committee for a review of the appropriateness of the sanctions imposed by the Panel.