

Takeovers and Mergers Panel Disciplinary Decision Kong Tai International Holdings Company Limited Mr David Wong "cold shouldered" unless and until arrangements are made to compensate shareholders

24 Jun 1999

The Takeovers and Mergers Panel today released its decision with regard to Kong Tai International Holdings Company Limited (Kong Tai) (formerly Golden Hill Land Development Company Limited). The Panel found that Mr Wong Wai Chi, David (Mr Wong), the Chairman and Managing Director of Kong Tai, acting in concert with an unnamed party (the Unnamed Party), breached Rule 26.1(b) of the Hong Kong Code on Takeovers and Mergers (the Takeovers Code) on 13 April 1994 by failing to make a general offer and did so with the clear intention of concealing the breach and avoiding his obligations under the Takeovers Code. Mr Wong also acted in concert with Mr Steven Chan (Mr Chan), the Managing Director of Peace Town Securities Limited, and Mr Kung Ting Keung (Mr Kung) in disregard of the provisions of the Takeovers Code.

The Panel considered that this was unacceptable conduct, particularly in the chairman of a listed company, and Mr Wong is, accordingly, publicly censured. The Panel has immediately imposed an order denying Mr Wong direct and indirect access to the securities markets (a cold shoulder order). The cold shoulder order is not intended to prejudice the business of any company in the Kong Tai group. The cold shoulder order will remain in force for a period of 12 months but may be uplifted earlier if Mr Wong makes arrangements satisfactory to the Executive to pay compensation to the beneficial owners of shares in Kong Tai on 13 April 1994 who were deprived of the benefit of receiving a general offer. Mr Chan is also publicly censured for failing to comply with General Principle 10 of the Takeovers Code.

Background

The Panel found that Mr Wong was acting in concert with each of the Unnamed Party, Mr Chan and Mr Kung during 1994 to obtain or consolidate control of Kong Tai.

On 13 April 1994, purchases of Kong Tai shares by the Unnamed Party resulted in Mr Wong and the Unnamed Party's aggregate shareholdings increasing from lower than 35% to 35.3% (or 254,000,000 shares). On that day a requirement to make a general offer was triggered at a price of HK\$0.50 per share (being the highest price paid by either of the concert parties for shares in Kong Tai within six months preceding 13 April 1994). Failure to make such a general offer is a breach of Rule 26.1(b) of Takeovers Code and the Panel found that Mr Wong so breached the Takeovers Code. Purchasing continued and at its highest point the aggregate holding of Mr Wong and the Unnamed Party was 40.6% of Kong Tai shares. The Executive was unable to serve papers on the Unnamed Party and, mindful of the principles of natural justice, the Panel made no finding against him in these proceedings, however, the Unnamed Party remains open to subsequent service by the Executive, should it so be determined, of papers in respect of the breach alleged.

The Panel believes that Mr Chan failed to act in accordance with the standards of conduct that might reasonably be expected of a registered person and that he gave less than frank disclosure to the Panel of the agreements or understandings that existed between him and Mr Wong. The Panel believes that he and Mr Wong have knowingly and deliberately not complied with General Principle 10 of the Takeovers Code.

The Panel is critical of the conduct of Mr Kung that he made no effort to establish whether there were regulatory consequences resulting from his actions and was not as forthright with the Panel as he should have been having regard to the provisions of General Principle 10 of the Takeovers Code.

The Panel has imposed a "cold shoulder" order on Mr Wong for a 12 month period unless and until he makes arrangements satisfactory to the Executive to compensate shareholders. In the event that Mr Wong makes such arrangements, compensation will be payable to beneficial owners of shares in Kong Tai on 13 April 1994. The amount will be approximately HK\$0.0265 per share (HK\$0.019 plus interest up to the date of payment). Payment will be made in accordance with the compensation

procedure set out in the Panel decision. An accounting or share registrar firm acceptable to the Executive will place advertisements in an English and a Chinese language newspaper which will contain further details of how to claim for compensation.

A copy of the Panel Decision and the relevant Takeovers Code provisions can be found in the Takeovers and Mergers Panel Decisions section of the SFC Website at <http://www.hksfc.org.hk>.

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