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Financial Services Regulatory Update
金融服务监管资讯

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Takeovers Executive of Hong Kong Securities and Futures Commission Publishes New Practice Note 24 on the Appointment of Receivers and Liquidators and When to Commence Offer Periods

On November 18, 2022, the Takeovers Executive of the Securities and Futures Commission of Hong Kong (SFC) published a new Practice Note 24 (PN 24) regarding the commencement of offer period upon appointment of a receiver or liquidator.

Takeovers Bulletin No. 52: commencement of offer period upon receiver or liquidator taking control of the controlling stake

The SFC noted a number of cases where lenders enforced security over controlling stakes in listed companies. In some cases, relevant parties overlooked possible implications by the Code on Takeovers and Mergers (Takeovers Code). In Takeovers Bulletin No. 52 issued in March 2020, the SFC pointed out that where an independent receiver or liquidator is appointed over a controlling interest in a Hong Kong public company (i.e. 30% or more of the voting rights), this will give rise to a possible offer on the expectation that the receiver or liquidator would act swiftly to sell the shares. Therefore, an offer period will commence as soon as the independent receiver or liquidator takes control of 30% or more of the voting rights of a company. An announcement under Rule 3.7 of the Takeovers Code is also expected to be published when this happens.

Subsequent observations by the Executive

After the publication of Takeovers Bulletin No. 52, the Executive has observed that there are a number of cases where there had been little, if any, developments for over two years since the appointment of the relevant receiver or liquidator, in contrast to the expectation that the secured assets would be disposed of shortly after the appointment. In many instances, the relevant receiver or liquidator may not be actively seeking or negotiating with a potential purchaser which could be due to market factors or a lack of interest in the relevant assets. In other instances, there may be settlement talks between the lender and the borrower.

Under the Takeovers Code, offeree companies are subject to a range of restrictions (such as the rules relating to frustrating actions) to their normal operations and additional compliance requirements (such as reporting on profit forecasts) during an offer period. A prolonged offer period with no substantive developments on a possible offer, and no real prospect of an offer, while subjecting the offeree companies to such restrictions and obligations may be unduly burdensome on the offeree company and may not be in the best interests of its shareholders.

Clarification by PN24

In view of the above observations, the Executive considers inappropriate to keep an offer period open or to commence an offer period when there is unlikely to be an imminent offer. There may also be possible false market concerns for an offeree company to be in an offer period when, in reality, there is unlikely to be an imminent offer.

In PN 24, the SFC clarified that the Executive will no longer expect an offer period to commence upon the appointment of a receiver or liquidator even if this may result in a possible change of control unless the receiver or liquidator indicates that: (i) it is actively looking for a potential purchaser for the controlling stake; or (ii) it is already in discussion with a potential purchaser over the controlling stake.

An offeree company should make appropriate enquiries with the receiver or liquidator and submit a draft Rule 3.7 announcement to the Executive for vetting if the case falls under (i) or (ii) above. In the draft announcement, the offeree company should disclose the appointment of a receiver or liquidator and the reason(s) for commencing an offer period. Following the commencement of the offer period, the offeree company will be required to publish monthly update announcements in line with existing practice and as required under Rule 3.7.

In cases where the appointment of a receiver or liquidator did not initially result in the commencement of an offer period, the receiver or liquidator and any future potential purchaser should take all necessary steps to

maintain confidentiality of information relating to a possible offer (such as, negotiations on the disposal of the controlling stake) and to ensure there is no leakage of such information. An offer period would only commence upon the issue of a Rule 3.5 firm intention announcement or a Rule 3.7 "talks" announcement which should only be made if an obligation to issue an announcement under Rule 3.1, Rule 3.2 or Rule 3.3 arises (for example, where there is a rumour or speculation about a possible offer or an undue movement in share price). This treatment is analogous to the Executive's approach to talks between a controlling shareholder and a potential purchaser over the sale of a controlling stake and the same principles would apply.

The parties should note that they are still subject to disclosure obligations of inside information under Part XIVA of the Securities and Futures Ordinance.

Remarks

As observed by the SFC, it often takes a long time for a receiver or a liquidator to realise the assets of a company. In some cases, a change of control of an offeree company eventually did not happen. Nonetheless, previously, an offer period would commence and the offeree company was required to publish a Rule 3.7 announcement. An offeree company would be subject to onerous restrictions imposed by the Takeovers Code during the offer period. This may also create unrealistic expectation of the shareholders of the offeree company.

The SFC has therefore adopted a more pragmatic approach. After the publication of PN 24, an offer period will not be commenced and Rule 3.7 announcement is not required even if a receiver or a liquidator is appointed and takes control of 30% or more of the voting rights of a company, unless there is an active search for or discussion with a potential purchaser. This will reduce the chance of creating false market concerns and may be more fair, just and reasonable to the offeree company and its shareholders.

香港证券及期货事务监察委员会收购执行人员发布关于接管人和清盘人的委任以及要约期何时开始的新《应用指引 24》

于 2022 年 11 月 18 日，香港证券及期货事务监察委员会（证监会）发布了新《应用指引 24》（指引 24），内容涉及任命接管人或清盘人后要约期的开始。

《收购通讯》第 52 期刊：要约期自接管人或清盘人取得控股权控制时开始

证监会注意到有不少个案涉及贷款人强制执行以上市公司的控股权作抵押的抵押品。在某些个案中，有关当事人忽略了这做法在《公司收购及合并守则》(《收购守则》) 的规限下可能产生的影响。在 2020 年 3 月刊发的《收购通讯》第 52 期中，证监会指出，若就香港公众公司的控股权（即 30% 或以上投票权）委任独立的接管人或清盘人，则因应预期接管人或清盘人将迅速采取行动出售股份的情况下将产生可能要约。因此，要约期将在独立接管人或清盘人控制公司 30% 或以上的投票权后立即开始。届时，应根据收购守则规则 3.7 发布公告。

执行人员其后的观察

在《收购通讯》第 52 期刊发以之后，执行人员有以下观察到有不少个案并无出现任何要约或控制权变动。部分个案自委任相关接管人或清盘人两年多以来，几乎没有进展，与委任后不久抵押资产便会被出售的预期相反。在许多情况下，相关接管人或清盘人未必会积极物色潜在买家或与其谈判（这可能是由于市场因素或对相关资产缺乏兴趣）。而在其他情况下，则为贷款人与借款人之间则可能正进行清偿债务的商讨。

根据《收购守则》，受要约公司在要约期内，其正常营运受到各种限制（例如有 关阻挠行动的规则）及须遵守额外的合规要求（例如具报盈利预测）。可能要约并无实质进展且要约没有真正成事的机会的漫长要约期，除了令到受要约公司因上述限制及责任而可能承受过重负担外，亦未必符合其股东的最佳利益。

指引 24 的澄清

基于上述观察所得，执行人员认为，在不太可能即将收到要约时维持要约期或开始要约期并不恰当。若事实上不太可能即将收到要约，但受要约公司却被处于要约期内，亦可能会出现虚假市场的忧虑。

在指引 24 中，证监会澄清，执行人员不会再预期要约期在接管人或清盘人获委任后即告开始，尽管该委任可能导致控制权有所变更，除非接管人或清盘人表示：(i)其正积极物色控股权的潜在买家；或(ii)其已与潜在买家就控股权进行洽谈。

受要约公司应向接管人或清盘人作出适当查询，如个案属上述(i)或(ii)的情况，便应向执行人员提交规则 3.7 公布草拟本以供审阅。受要约公司应在该公布草拟 本中披露接管人或清盘人的委任情况及开始要约期的理由。要约期开始后，受要约公司须按现行惯例及规则 3.7 的规定每月发出更新公布。

在接管人或清盘人的委任最初并无引致要约期开始的情况下，接管人或清盘人及任何未来的潜在买家都应采取

一切必要措施，将有关可能要约的资料（例如 有关出售控股权的谈判）保密，并确保有关资料不会外泄。要约期仅会在发出规则 3.5 确实意图公布或规则 3.7“洽商”公布后才开始，而规则 3.7“洽商” 公布仅应在有责任根据规则 3.1、规则 3.2 或规则 3.3 发出公布时（例如出现可能要约的谣言或揣测，或股价出现不正常波动）发出。这种处理方式与执行人员对待控股股东与潜在买家就出售控股权而进行的洽商的方法相符，且相同的原则适用。

当事人应注意他们仍须履行根据证券及期货条例第 XIVA 部的披露内幕消息的责任。

结语

据证监会观察，接管人或清盘人往往需要很长时间才能变现公司的资产。 在某些情况下，受要约公司的控制权最终并没有发生变化。 尽管如此，在此前，要约期会开始，受要约公司须发布规则 3.7 公告。 受要约公司在要约期间将受到《收购守则》施加的严格限制。 这也可能对受要约公司的股东产生不切实际的期望。

证监会因此采取了更为务实的做法。指引 24 发布后，即使委任接管人或清盘人并由其控制公司 30% 或以上的表决权，要约期也不会开始，也无需根据规则 3.7 公告，除非有积极寻找或与潜在购买者讨论的情况。 这将减少创造虚假市场警号的机会，对受要约公司及其股东来说可能更加公平、公正和合理。

Source 来源:
https://www.sfc.hk/-/media/EN/files/CF/pdf/Practice_Notes/Practice-Note-24_EN_20221118.pdf?rev=0237b606a5154c7086713aac1869148a&hash=77B9C064D325F7988E81C89BE2D59BFF

The Eastern Magistrates' Court of Hong Kong Sentenced Mr. Wong King Hoi to Imprisonment for Obstruction of the Search Operation of the Securities and Futures Commission – First Such Imprisonment Case in Hong Kong

On November 10, 2022, the Eastern Magistrates' Court of Hong Kong sentenced Mr. Wong King Hoi (Wong) to two weeks of imprisonment after his conviction of the offence of obstructing employees of the Securities and Futures Commission (SFC) in the execution of a search warrant following a prosecution brought by the SFC. Wong was ordered to pay the SFC's investigation costs.

Under section 382 of the Securities and Futures Ordinance (SFO), a person who, without reasonable excuse, obstructs any specified person in the performance of a function under the SFO commits an offence and is liable (a) on conviction on indictment to a fine of HK$1,000,000 and to imprisonment for 2 years; or (b) on summary conviction to a fine of HK$100,000 and to imprisonment for 6 months. Under the SFO, a specified person includes the SFC and its employees or any person appointed to investigate any matter under section 182(1) of the SFO.

In October 2021, the SFC obtained a search warrant to search for, seize and remove from Wong's residence records and documents relating to the SFC's investigation into suspected market manipulation of the shares of a Hong Kong-listed company. When the SFC executed the search warrant at Wong's residence, Wong allegedly delayed in giving the SFC search team access to his residence and attempted to dispose of four objects including two mobile phones and two notebooks. Wong was convicted for obstruction of SFC's search operation on October 27, 2022.

This is the first case that a person is convicted for obstructing the SFC's employees in performance of their functions empowered under the SFO. The regulators in Hong Kong have apparently taken a more precision-based approach towards regulatory enforcement.

Mr. Christopher Wilson, the SFC's Executive Director of Enforcement said that the sentence sends a strong and clear message that the obstruction is a significant impairment to the SFC's lawful duty. It is a serious offence if a person who willfully obstructs the SFC officers to perform their duties and the SFC is determined to take legal actions against those offenders.

香港东区裁判法院因妨碍证券及期货事务监察委员会搜查行动判处黄敬凯先生入狱 – 香港首宗此类监禁案例

于 2022 年 11 月 10 日，香港东区裁判法院早前在证券及期货事务监察委员会（证监会）提出检控后，裁定黄敬凯（黄）妨碍证监会的雇员执行搜查令的罪名成立，判处其监禁两个星期。黄被饬令支付证监会的调查费用。

根据《证券及期货条例》第 382 条，任何人无合理辩解而妨碍任何指明人士执行该条例授予的职能，即属犯罪，(a)一经循公诉程序定罪，可处罚款 100 万港元及监禁两年；或(b)一经循简易程序定罪，可处罚款 10 万港元及监禁六个月。根据该条例，指明人士包括证监会及其雇员或根据第 182(1)条获委任调查任何事宜的人。

证监会在 2021 年 10 月取得搜查令，以在黄的住所内搜寻、检取和移走与证监会就某香港上市公司股份可能涉及市场操纵行为所作调查有关的纪录及文件。证监会在黄的住所执行搜查令时，黄涉嫌拖延不让证监会搜查队进入该处所，并试图处置四件物件包括两部手提电话及两本笔记簿。黄于 2022 年 10 月 27 日被裁定妨碍证监会搜查行动罪名成立。

这是首宗有人因妨碍证监会的雇员履行其根据《证券及期货条例》获赋权的职能而被判罪成的个案。香港的监管机构似乎对监管执法采取了更加精确的方法。

证监会法规执行部执行董事魏弘福先生（Mr. Christopher Wilson）表示该判刑带出强烈而清晰的讯息，就是妨碍执行搜查令的行为严重损害证监会的法定职责。任何人故意妨碍证监会人员履行职责，属干犯严重罪行，证监会坚决对这些犯罪者采取法律行动。

Source 来源:
https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR95
https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/enforcement-news/doc?refNo=22PR85

The Securities and Futures Commission of Hong Kong Publicly Criticizes Gold Dragon Worldwide Asset Management Limited for Breaches of Takeovers Code

On October 28, 2022, the Securities and Futures Commission (SFC) of Hong Kong published announcement that it has publicly criticized Gold Dragon Worldwide Asset Management Limited (Gold Dragon) for its failure to disclose dealings in the shares of Shanghai Dongzheng Automotive Finance Co., Limited (Shanghai Dongzheng) in contravention of the Code on Takeovers and Mergers (Takeovers Code).

Between March 12, 2021 and April 14, 2022, Gold Dragon, acting as the investment manager of Seahawk China Dynamic Fund, executed 53 trades in Shanghai Dongzheng's H shares during an offer period which commenced on February 3, 2022 when it announced a possible sale of 71.04% of the total issued share capital held by its controlling shareholder. Gold Dragon failed to disclose these dealings as required by Rule 22 of the Takeovers Code. Gold Dragon owned or controlled more than 5% of Shanghai Dongzheng's issued H shares at the relevant time and was therefore an associate of Shanghai Dongzheng.

The Takeovers Executive considers that Gold Dragon, as a fund manager, should put appropriate and adequate compliance systems in place to ensure compliance with all applicable regulatory requirements. As such, the breaches merit disciplinary action.

Gold Dragon accepted that it breached the Takeovers Code and agreed to the disciplinary action taken against it. It has implemented enhancements and remedial measures to ensure future compliance with the Takeovers Code.

The SFC reminds 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 and mergers in accordance with the Takeovers Code. In particular, associates must report their dealings in the relevant securities of the offeree company (and of the offeror company in the case of a securities exchange offer) during an offer period in accordance with Rule 22 of the Takeovers Code.

香港证券及期货事务监察委员会公开批评金龙世兴资产管理有限公司违反《收购守则》

于 2022 年 10 月 28 日，香港证券及期货事务监察委员会（证监会）公开批评金龙世兴资产管理有限公司（金龙）违反《公司收购及合并守则》（《收购守则》），原因是其没有披露就上海东正汽车金融股份有限公司（上海东正）股份进行的交易。

在 2021 年 3 月 12 日至 2022 年 4 月 14 日期间，金龙以 Seahawk China Dynamic Fund 的投资管理人身分，在要约期（上海东正于 2021 年 2 月 3 日公布，其控股股东可能会出售所持有已发行股本总额中的 71.04%予一名潜在买家；有关要约期于同日展开）内就上海东正 H 股执行了 53 宗交易。金龙没有按照《收购守则》规则 22 披露有关交易。金龙在有关时间拥有或控制上海东正已发行 H 股的 5%以上，因此是上海东正的联系人。

收购执行人员认为，金龙作为基金经理，应设有适当及足够的合规系统，以确保遵从所有适用的监管规定。因此，有充分理据就该等违规事件采取上述纪律行动。

金龙承认其违反了《收购守则》，并同意接受对其采取的纪律行动。为确保《收购守则》日后得到遵从，金龙已落实多项改善和补救措施。

证监会提醒有意利用香港证券市场的从业员及人士，在进行收购及合并相关的事宜时，应根据《收购守则》行事。尤其是，联系人必须按照《收购守则》规则 22 具报其于要约期内就受要约公司（及要约公司，如属证券交换要约）的有关证券所进行的交易。

Source 来源:
https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR86

The Securities and Futures Commission of Hong Kong Reprimands and Fines Swiss-Asia Asset Management (HK) Limited HK$3 Million for Internal Control Failings and Regulatory Breaches

On November 8, 2022, the Securities and Futures Commission (SFC) of Hong Kong announced that it has reprimanded and fined Swiss-Asia Asset Management (HK) Limited (currently licensed under the Securities and Futures Ordinance to carry on Type 4 (advising on

securities) and Type 9 (asset management) regulated activities) (Swiss-Asia) HK$3 million for internal control failings and regulatory breaches in relation to the monitoring of trading activities in discretionary accounts and record keeping.

The relevant regulations include:

- General Principle 2 (Diligence) of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (Code of Conduct), which requires a licensed person to act with due skill, care and diligence, in the best interests of its clients and the integrity of the market;

- Paragraph 4.3 (internal control, financial and operational resources) of the Code of Conduct, which requires a licensed person to have internal control procedures and financial and operational capabilities which can be reasonably expected to protect its operations, its clients and other licensed or registered persons from financial loss arising from theft, fraud, and other dishonest acts, professional misconduct or omissions;

- Paragraph 7.1(e) of the Code of Conduct, which requires a licensed person to implement internal control procedures to ensure proper supervision of the operation of discretionary accounts;

- Paragraph 6 of Part IV of the Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the SFC (Internal Control Guidelines) provides that management should establish and maintain effective record retention policies which ensure that all relevant legal and regulatory requirements are complied with, and which enable the firm, its auditors, and other interested parties such as the SFC to carry out routine and ad hoc comprehensive reviews or investigations; and

- Paragraph 2 of Part VII of the Internal Control Guidelines, which provides, among others, that where the firm exercises discretionary authority over a client's account, procedures should be used to ensure that only transactions which are consistent with the investment strategies and objectives of the relevant client, are effected on the client's behalf.

The disciplinary action follows an SFC investigation into the internal controls of Swiss-Asia after a client's complaint. The complaint centered on option trading by a former licensed representative of Swiss-Asia in the client's discretionary account. The client claimed that some of the trades were much riskier than agreed and fell outside the scope of her asset management mandate agreement with Swiss-Asia between April 2015 and August 2016.

The SFC's investigation found deficiencies in internal controls of Swiss-Asia, in that it failed to:

- properly monitor the trading activities in the client's discretionary account for around 15 months;
- have procedures in place to ensure proper supervision of the operation of discretionary accounts; and
- maintain proper records of its compliance checks on discretionary accounts.

In deciding the sanction, the SFC took into account all relevant circumstances, including:

- the duration of Swiss-Asia's failures;
- Swiss-Asia's cooperation in resolving the SFC's concerns; and
- Swiss-Asia's otherwise clean disciplinary record.

香港证券及期货事务监察委员会谴责 Swiss-Asia Asset Management (HK) Limited 内部监控缺失及违反监管规定并处以罚款 300 万港元

于 2022 年 11 月 8 日，香港证券及期货事务监察委员会（证监会）公布其谴责 Swiss-Asia Asset Management (HK) Limited（现时根据《证券及期货条例》获发牌进行第 4 类（就证券提供意见）及第 9 类（提供资产管理）受规管活动）（Swiss-Asia）并处以罚款 300 万元，原因是其在监察委托帐户的买卖活动及备存纪录方面，犯有内部监控缺失和违反监管规定。

相关监管规定包括：

- 《证券及期货事务监察委员会持牌人或注册人操守准则》（《操守准则》）第 2 项一般原则（勤勉尽责）规定，持牌人应以适当的技能、小心审慎和勤勉尽责的态度行事，以维护客户的最佳利益及确保市场廉洁稳健；

- 《操守准则》第 4.3 段（内部监控、财政及运作资源）规定，持牌人应设有妥善的内部监控程序、财政资源及操作能力，而按照合理的预期，这些程序和能力足以保障其运作、客户及其他持牌人或注册人，以免其受偷窃、欺诈或其他不诚实的行为、专业上的失当行为或不作为而招致财政损失；

- 《操守准则》第 7.1(e)段规定，持牌人应执行内部监控程序，确保委托帐户的操作得到适当的监督；

- 《适用于证监会持牌人或注册人的管理、监督及内部监控指引》（《内部监控指引》）第 IV 章第 6 段规定，管理层应建立并维持有效的纪录保存政策，以确保一切有关的法律及监管规定均获得遵守；同时令公司本身、其核数师和其他有关的机构，如证监会，得以定期及就个别个案进行全面的检讨或调查；及

- 《内部监控指引》第 VII 章第 2 段规定，（其中包括）凡公司受全权委托处理客户的帐户，便应采用适当程序，以确保只会代客户执行符合该客户的投资策略和目标的交易。

证监会接获一宗客户投诉后对 Swiss-Asia 的内部监控展开调查，继而采取上述纪律行动。该投诉主要针对 Swiss-Asia 前持牌代表于客户委托帐户内进行的期权买卖。客户声称，在 2015 年 4 月至 2016 年 8 月期间，部分买卖的风险远高于协定，且超出她与 Swiss-Asia 签订的资产管理授权协议的范围。

证监会的调查发现，Swiss-Asia 的内部监控不足，原因是它没有：

- 适当地监察客户委托帐户内的买卖活动，为时约 15 个月；
- 制定程序确保委托帐户的操作得到适当的监督；及
- 就其对委托帐户而进行的合规检查备存妥善的纪录。

证监会在决定采取上述处分时，已考虑到所有相关情况，包括：

- Swiss-Asia 的缺失所持续的时间；
- Swiss-Asia 在解决证监会提出的关注事项时表现合作；及
- Swiss-Asia 过往并无遭受纪律处分的纪录。

Source 来源:
https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR93

The Stock Exchange of Hong Kong Limited Conducts Disciplinary Action against China Bright Culture Group (Stock Code: 1859) and Two Current and Former Executive Directors, Questioning the Commercial Rationale of the Harsh Termination Provisions of an Asset Management Agreement

On November 21, 2022, The Stock Exchange of Hong Kong Limited (Exchange) published a statement of disciplinary action in relation to the disciplinary action against China Bright Culture Group (Stock Code: 1859) (Company) and two of its current and former executive directors.

The Company was listed on March 13, 2020. AMTD Global Markets Limited (AMTD) acted as joint global coordinator, joint bookrunner and joint lead manager of the Company's initial public offering (IPO). Proceeds from placees arranged by AMTD amounted to approximately US$70.8 million (being 66 per cent of the IPO proceeds).

On the first day of listing, the Company entered into an asset management agreement with AMTD and deposited a total of US$70.8 million into an investment portfolio account. The Company paid AMTD an upfront fee of 5 per cent of the investment amount.

There was no disclosure of this agreement in the Company's prospectus, and the Company failed to comply with the Listing Rule requirements for major transactions.

The entire investment amount was used by AMTD to subscribe for a promissory note issued by its affiliated party. The transactions were terminated in 2021 and the Company redeemed the investment amount. The Company did not receive any interest or return, and did not receive any refund of the US$3.5 million fee that had been paid to AMTD.

The Listing Committee did not accept the explanations given by the Company, Mr. Liu Mu (Mr. Liu) and Mr. Xia Rui (Mr. Xia) for the circumstances around, and the commercial rationale for, the arrangement.

Sanctions and Directions

The Exchange made the following sanctions and directions.

CENSURES:

(1) the Company;
(2) Mr. Liu, executive director of the Company;

CRITICISES:

(3) Mr. Xia, former executive director of the Company;

AND DIRECTS:

Mr. Liu to attend 20 hours of training on regulatory and legal topics and Listing Rule compliance, including at least three hours on each of (i) directors' duties; (ii) the Corporate Governance Code; and (iii) the Listing Rule requirements for Rule 2.13 and Chapter 14 (Training), within 90 days; and

Mr. Xia to attend the Training as a pre-requisite of any future appointment as a director of any company listed or to be listed on the Exchange.

Remarks

The Exchange has concluded a number of cases involving the making of substantial investments and/or payments around or shortly after an issuer's listing, which had not been properly disclosed.

The Exchange has always considered the disclosure on the use of proceeds by newly listed issuers and the placing of shares in an IPO to be an important focus. The Joint Statement on IPO-related misconduct published by the SFC and the Exchange in May 2021 reiterated the Exchange's position in this regard.

Directors of listed issuers should note that the lack of commercial rationale of their transactions may give rise to enforcement proceedings regarding failure of directors' duties.

香港联合交易所有限公司对煜盛文化集团（股份代号：1859）及两名现任和前任执行董事执行纪律行动，质疑公司签署的资产管理协议下苛刻的终止条款的商业依据

于 2022 年 11 月 21 日，香港证券及期货事务监察委员会（证监会）发布对煜盛文化集团（股份代号：1859）（该公司）及两名现任和前任执行董事的纪律行动的纪律行动声明。

该公司于 2020 年 3 月 13 日上市。尚乘环球市场有限公司（尚乘）担任该公司首次公开招股的联席全球协调人、联席账簿管理人及联席牵头经办人。来自经尚乘承配新股人士的所得款项约 7,080 万美元（占首次公开招股所得款项的 66%）。
于上市首日，该公司与尚乘签订了一份资产管理协议，将合共 7,080 万美元存入投资组合账户。该公司向尚乘支付了相等于投资金额 5%的预付款。

该公司的招股章程没有披露此协议，而该公司亦未有遵守《上市规则》对主要交易的规定。

尚乘将投资金额全部用于认购其联属公司所发行的承兑票据。交易于 2021 年终止，该公司亦赎回投资金额。该公司没有得到任何利息或回报，而已支付给尚乘的 350 万美元费用亦没有退回。

上市委员会不接纳该公司、刘牧先生（刘先生）及夏瑞先生（夏先生）就上述安排的情况及背后的商业理由所作出的解释。

制裁及指令

联交所

谴责：

(1) 该公司；
(2) 该公司执行董事刘先生；

批评：

(3) 该公司前执行董事夏先生；

并指令：

刘先生于 90 日内完成 20 小时关于监管及法律议题以及《上市规则》合规事宜的培训，当中包括以下内容各至少 3 小时：(i) 董事职责；(ii)《企业管治守则》；及(iii)《上市规则》第 2.13 条和第十四章的规定（培训）；及

夏先生日后若要再获委任为联交所上市公司或将于联交所上市的公司的董事，先决条件是完成培训。

评论

联交所至今已处理多宗涉及于上市前后或上市后不久作出重大投资及／或付款却未有妥善披露的个案。

联交所向来十分重视新上市发行人对于所得款项的用途以及首次公开招股中股份配售情况的披露，证监会与联交所于 2021 年 5 月发表的《有关涉及首次公开招股的失当行为的联合声明》正正重申了联交所在这方面的立场。

上市发行人的董事应注意，若他们的交易缺乏足够的商业理由可能会导致有关董事遭受未能履行董事职责的执法调查。

Source 来源:
https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR86
https://www.hkex.com.hk/-/media/HKEX-Market/News/News-Release/2021/210520news/IPOJointStatement_e.pdf