J M L
Jeffrey Mak Law Firm
麦振兴律师事务所
www.jmaklegal.com

Financial Services Regulatory Update
金融服务监管资讯

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A Caveat on Mandatory General Offer Triggered by the "Chain Principle"

On January 25, 2022, the Securities and Futures Commission of Hong Kong (SFC) publicly censured and imposed a 12-month cold-shoulder order against Chu Hing Tsung (HT Chu) for breaching the mandatory general offer obligation under Rule 26.1 of the Code on Takeovers and Mergers (Takeovers Code). HT Chu will be denied direct or indirect access to the Hong Kong securities market for a period of 12 months commencing on January 25, 2022 and ending on January 24, 2023.

Background

Zhuguang Holdings Group Company Limited (Company) has been listed on The Stock Exchange of Hong Kong Limited since 1996. In 2009, Rong De Investments Limited (Rong De) acquired a controlling interest in the Company. At that time, Re Dong was owned as to 60% by Liao Tengjia (Liao) and 40% by Chu Muk Chi (MC Chu), an older brother of HT Chu.

In 2012, HT Chu sold: (i) the entire issued share capital in Profaith International Investments Limited (Profaith International); and (ii) a loan owed by Profaith International and its subsidiaries to him, to a wholly-owned subsidiary of the Company for a consideration of RMB354.5 million (2012 Discloseable Transaction). The consideration would be satisfied by way of issuance to HT Chu (or a person nominated by him) of 437,453,000 new shares in the Company (Shares) at the issue price of HK$1.00 per Share (Consideration Shares). The Consideration Shares represented 17.72% of the Company's then existing share capital and 15.05% of the issued share capital as enlarged by the issue of the Consideration Shares.

Later in an application for a ruling in relation to a proposed transaction in 2021, the SFC's enquiries revealed that HT Chu had nominated Rong De to take up the Consideration Shares. Rong De's interest in the Company increased from 52.76% to 59.87% following the issue of the Consideration Shares. In return, Rong De issued to HT Chu 50,280 new shares in Rong De, representing 25.14% of the enlarged issued share capital of Rong De. That number was determined by reference to the proportion of the number of Consideration Shares to the total number of Shares held by Rong De immediately after the issue of the Consideration Shares. Following completion of the 2012 Discloseable Transaction, Rong De was held as to 44.92% by Liao, 29.94% by MC Chu and 25.14% by HT Chu.

It further transpired that on June 15, 2012, Liao transferred 17,840 shares in Rong De (representing 8.92% in Rong De) to HT Chu as Liao wished to realize part of his investment. Upon completion of the transfer, HT Chu became interested in a total of 34.06% of Rong De. Thereafter the shareholding in Rong De remained the same to July 2021 with Liao holding 36.00%, MC Chu 29.94% and HT Chu 34.06%. HT Chu and MC Chu (deemed to be acting in concert) obtained statutory control of Rong De by holding more than 50% of the voting rights in Rong De. Given Rong De held 59.87% interest in the Company at the material time, HT Chu's acquisition of shares in Rong De as a result of the 2012 Discloseable Transaction triggered a mandatory general offer for the Shares under the "chain principle" pursuant to Note 8 to Rule 26.1 of the Takeovers Code. However, no general offer was made at that time.

While the parties had sought legal advice for the 2012 Discloseable Transaction, they were not advised of the implications under the Takeovers Code. HT Chu accepted that he had breached Rule 26.1 of the Takeovers Code and agreed to the disciplinary action against him.

"Chain principle" under Note 8 to Rule 26.1

A person or group of persons acting in concert acquiring statutory control (the degree of control which a company has over a subsidiary, typically over 50%) of a company (which need not be a company to which the Takeovers Code applies) may thereby acquire or consolidate control of a second company because the first company itself holds, directly or indirectly, a controlling interest in the second company or holds voting rights which, when aggregated with those already held by the person or

group, secure or consolidate control of the second company.

Note 8 to Rule 26.1 of the Takeovers Code provides that the Executive Director of the SFC's Corporate Finance Division (Executive) will not normally require an offer to be made under Rule 26 in these circumstances unless either:–

(a) the holding in the second company is significant in relation to the first company. In assessing this, the Executive will take into account a number of factors including, as appropriate, the assets and profits of the respective companies. Relative values of 60% or more will normally be regarded as significant (substantiality test); or

(b) one of the main purposes of acquiring control of the first company was to secure control of the second company (purpose test).

The Executive should be consulted in all cases which may come within the scope of Note 8 to Rule 26.1, which is commonly referred to in the Takeovers Code as the "chain principle", to establish whether, in the circumstances, any obligation arises under Rule 26.

In this case, HT Chu and MC Chu, which are considered to be a group of persons acting in concert, held in aggregate more than 50% of Rong De (the first company) and therefore obtained statutory control of it. HT Chu's position was further consolidated following completion of the transfer from Liao. Since Rong De is an investment holding company, its holding of 59.87% interest in the Company (the second company) at the time of the completion of the 2012 Discloseable Transaction is significant in relation to Rong De. It is clear that a chain principle offer had been triggered by HT Chu as a result of his acquisition of shares in Rong De in the 2012 Discloseable Transaction.

Remarks

While the SFC sympathized with the parties not being advised of the Takeovers Code implications for the 2012 Discloseable Transaction and noted that the 2012 Discloseable Transaction was approved by all of the independent shareholders of the Company that had voted, the Company's shareholders were deprived of the right to receive a general offer.

Rule 26.1 is one of the most fundamental provisions in the Takeovers Code and expects persons who are actively engaged in the securities market to comply with the Takeovers Code which includes identifying potential Takeovers Code issues. This is particularly the case in respect of a listed company director who has undertaken to use the best of his or her abilities to comply with the Takeovers Code. Inadequate legal advice is not a viable defense for violation of the Takeovers Code. The SFC considered that HT Chu's conduct merits disciplinary action.

On the other hand, professional advisers, even if they may have not been engaged to advise on the Takeovers Code, could remind parties to seek advice on the Takeovers Code, if and as necessary. A simple reminder, even if superfluous, would be harmless. 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.

"连锁关系原则"引发的强制全面要约不容忽视

于 2022 年 1 月 25 日，香港证券及期货事务监察委员会（证监会）公开谴责朱庆凇违反《公司收购及合并守则》（《收购守则》）规则 26.1 下的强制全面要约责任，并对其施加为期 12 个月的冷淡对待令。朱庆凇将被禁止直接或间接使用香港证券市场设施，为期 12 个月，由 2022 年 1 月 25 日起至 2023 年 1 月 24 日止。

背景

珠光控股集团有限公司（该公司）自 1996 年起在香港联合交易所有限公司主板上市。 2009 年，融德投资有限公司（融德）取得该公司控制性权益。当时，廖腾佳（廖）及朱沐之，朱庆凇的哥哥，分别拥有融德的 60%及 40%的权益。

在 2012 年，朱庆凇向该公司一家全资附属公司出售：(i)盈信国际控股有限公司（盈信国际）的全部已发行股本；及(ii)盈信国际及其附属公司结欠他的贷款，代价为人民币 3.545 亿元（2012 年须予披露交易）。代价将透过按发行价每股 1.00 港元向朱庆凇（或他指名的人士）发行 437,453,000 股新的该公司股份（该股份）偿付（代价股份）。

后来在 2021 年申请就某个拟议交易作出裁决时，证监会查询发现朱庆凇曾指名融德接受代价股份。在代价股份发行后，融德于该公司的权益由 52.76%增至 59.87%。作为回报，融德向朱庆凇发行 50,280 股融德的新股份，占融德经扩大后已发行股本的 25.14%。该数目是参照代价股份的数目占融德紧随代价股份发行后持有该股份总数的比例而厘定的。在 2012 年须予披露交易完成后，廖、朱沐之及朱庆凇分别持有融德的 44.92%、29.94%及 25.14%的权益。

证监会进一步发现，由于廖有意变现部分投资，因此他在 2012 年 6 月 15 日向朱庆凇转让 17,840 股融德股份（相当于融德股份的 8.92%）。在转让完成后，朱庆凇合共持有融德 34.06%的权益。此后，融德的股权在

2021 年 7 月前维持不变，分别由廖、朱沐之和朱庆凇持有 36.00%、29.94%和 34.06%的权益。朱庆凇及朱沐之(被视为一致行动人)因持有融德 50%以上的投票权，故取得了融德的法定控制权。鉴于融德在关键时间持有该公司 59.87%的权益，朱庆凇因 2012 年须予披露交易而收购融德股份一事，依据《收购守则》规则 26.1 注释 8 就该股份触发了连锁关系原则下的强制全面要约。然而，他当时没有作出全面要约。

虽然当事人已就 2012 年须予披露交易寻求法律意见，但他们没有获告知有关在《收购守则》的规限下可能产生的影响。朱庆凇承认违反了《收购守则》规则 26.1，并同意对他采取的纪律行动。

规则 26.1 注释 8 下的连锁关系原则

一个人或一致行动的一组人取得一间公司（该公司不必是《收购守则》适用的公司）的法定控制权（指一间公司对其附属公司的控制程度，一般为持股量超过 50%）后，或会因此而取得或巩固对第二间公司的控制权， 原因是第一间公司本身持有该第二间公司的控制性权益，或第一间公司直接或间接持有该第二间公司的控制性权益，或第一间公司持有的投票权经与该人或该组人已经持有的投票权合计后，便会令致取得或巩固对该第二间公司的控制权。

《收购守则》规则 26.1 注释 8 规定，在这些情况下，证监会企业融资部执行董事（执行人员）通常不会规定须根据规则 26 作出要约，但下列任何一项情况则除外：－

(c) 在该第二间公司的持有量构成第一间公司的重大部分。在衡量该等情况时，执行人员将考虑若干因素，当中（如适用）包括分别属于有关公司的资产和利润。就此等相对价值而言，60%或以上将通常会视为构成重大部分（重大测试）；或

(d) 取得第一间公司控制权的其中一项主要目的，是要取得该第二间公司的控制权（目的测试）。

如果出现任何可能属于规则 26.1 注释 8（在《收购守则》中通常称为“连锁关系原则”）范围内的情况，应咨询执行人员的意见，以确定当时的情况下，是否已产生规则 26 规定的任何责任。

在这个案中，朱庆凇和朱沐之（二人被视为一致行动的人）合共持有融德（第一间公司） 50%以上的股份，因此取得融德的法定控制权。朱庆凇的地位在来自廖的转让完成后进一步获得巩固。由于融德是一家投资控股公司，它当时在 2012 年须予披露交易完成时持有该公司（第二间公司）59.87%的权益，对融德而言构成重大部分。显然，由于朱庆凇在 2012 年须予披露交易中收购融德的股份，因而触发了连锁关系原则要约。

结语

虽然证监会对当事人没有获告知有关 2012 年须予披露交易在《收购守则》的规限下可能产生的影响感到遗憾，并注意到，2012 年须予披露交易已获所有投票的独立股东的批准，但此事使该公司的股东失去了接获全面要约的权利。

证监会认为规则 26.1 是《收购守则》其中一条最重要的条文，并期望所有积极从事证券市场活动的人士遵守《收购守则》，当中包括识别可能出现的《收购守则》事宜。上市公司董事尤其应遵守这项要求，因为他们必须尽最大能力遵从《收购守则》。没能获取充分的法律意见不是违反《收购守则》的可行抗辩理由。证监会认为朱庆凇的行为足以使证监会对其采取纪律行动。

另一方面，即使专业顾问没有被聘请就《收购守则》提供意见，也可以提醒有关方是否需要就《收购守则》寻求意见。一个简单的提醒，即使是多余的，也是无害的。如对《收购守则》的适用有任何疑问，应尽早咨询执行人员的意见。

Source 来源:
https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR3
https://www.sfc.hk/-/media/EN/files/CF/pdf/Cold-Shoulder/Executive-Statement-EN_20220125.pdf
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Market Misconduct Tribunal Sanctions Tianhe Chemicals Group Limited and its Executive Director for Issuing False or Misleading Information in the Company's Listing Prospectus

On January 25, 2022, The Market Misconduct Tribunal (MMT) has found Tianhe Chemicals Group Limited (Tianhe) and its executive director, Mr. Wei Xuan (Wei) culpable of market misconduct by issuing false or misleading IPO prospectus to overstate the company's revenue by over RMB6.7 billion following proceedings brought by the Securities and Futures Commission (SFC).

The SFC instituted proceedings in the MMT against Tianhe and Wei for market misconduct under section 277 of the Securities and Futures Ordinance (SFO). The SFC suspended the share trading of Tianhe on May 25, 2017 under section 8 of the Securities and Futures (Stock Market Listing) Rules. The shares of Tianhe were delisted by the Stock Exchange of Hong Kong Limited with effect from June 11, 2020.

The MMT is satisfied that the IPO prospectus contained materially false or misleading information regarding Tianhe's revenues and profits for its track record period for the financial years from 2011 to 2013 and makes the following order under section 257 of the SFO:

- Wei, who was a substantial indirect shareholder and chief executive officer of Tianhe at the material time, was disqualified from being a director and being involved in the management of a listed company for four years (section 257(1)(a) of the SFO);
- an order that each of Tianhe and Wei shall not perpetrate any conduct which constitutes market misconduct (section 257(1)(c) of the SFO); and
- an order against Tianhe and Wei to pay costs to the Government and the SFC (section 257(1)(e) and (f) of the SFO).

The MMT is also satisfied that 53% of Tianhe's total track record revenue of RMB12.6 billion disclosed in the prospectus was overstated. The overstated revenue and profits were likely to induce subscriptions for or purchases of the shares of Tianhe and/or to increase the share price of Tianhe in Hong Kong.

The MMT concludes that Tianhe and Wei were reckless as to whether the overstated revenue and profits in the prospectus were false or misleading when authorizing the issuance of the prospectus.

Tianhe issued the prospectus on June 9, 2014 for its IPO in Hong Kong and raised net proceeds of approximately HK$3.52 billion.

市场失当行为审裁处因在天合化工集团有限公司的上市招股章程中发布虚假或具误导性的资料制裁该公司及其执行董事

于 2022 年 1 月 25 日，市场失当行为审裁处（审裁处）因应证券及期货事务监察委员会（证监会）早前提起的研讯程序，裁定天合化工集团有限公司（天合）及其执行董事魏宣先生（魏）曾干犯市场失当行为，原因是他们发出内容属虚假或具误导性的首次公开发售招股章程，将该公司的收入夸大了逾人民币 67 亿元。

证监会根据《证券及期货条例》第 277 条，在审裁处对干犯了市场失当行为的天合及魏展开研讯程序。证监会于 2017 年 5 月 25 日根据《证券及期货（在证券市场上市）规则》第 8 条，暂停天合的股份交易。天合股份自 2020 年 6 月 11 日起被香港联合交易所有限公司取消上市地位。

由于审裁处信纳该首次公开发售招股章程载有关于天合在 2011 年至 2013 年财政年度的往绩纪录期间，在要项上属虚假及具误导性的收入和溢利资料，遂根据《证券及期货条例》第 257 条作出以下命令：

- 魏（在关键时间是天合的主要间接股东兼行政总裁）不得担任上市公司的董事或参与该等公司的管理，为期四年（《证券及期货条例》第 257(1)(a)条）；
- 天合及魏各自不得作出构成市场失当行为的任何行为（《证券及期货条例》第 257(1)(c)条）；及
- 天合及魏须向政府和证监会支付讼费(《证券及期货条例》第 257(1)(e)及(f)条)。

审裁处亦信纳，在招股章程所披露的人民币 126 亿元天合往绩纪录总收入之中，有 53%被夸大。被夸大的收入和溢利相当可能会诱使他人认购或购买天合股份及／或令天合于香港的股价上升。

审裁处得出的结论是，天合及魏在授权发出招股章程时，罔顾招股章程中被夸大的收入和溢利是否属虚假或具误导性。

天合就其于香港进行的首次公开发售，在 2014 年 6 月 9 日发出招股章程，并筹得约 35.2 亿港元的所得款项净额。

Source 来源:
https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR4

China Securities Regulatory Commission Issues "Guidance on Improving the Quality of Prospectus Information Disclosure under the Registration System"

On January 28, 2022, in order to further promote the improvement of the quality of information disclosure in prospectuses, the China Securities Regulatory Commission (CSRC) issued the 'Guidance on Improving the Quality of Information Disclosure in Prospectuses under the Registration System' (the Guidance).

The prospectus is the main vehicle for information disclosure in the issuance phase of shares under the registration system and is the basic basis for investors to make value judgments and investment decisions. It is the core and most important legal document in the process of issuance and listing of enterprises. In the course of the registration system pilot reform, while the quality of prospectus information disclosure is being improved, there are still problems such as poor readability, relevance of investment decisions and relevance of information disclosure to be enhanced, which have been voiced out by various parties in the market. The issuance of the Guidance, through a series of measures to improve the quality of prospectus information disclosure, so that prospectuses become

information disclosure documents that ordinary investors are willing to read and understand, and help intermediaries reduce duplication of efforts and return to their duties. Therefore, it is an important measure to enhance the sense of accessibility to the reformed registration system, protect the legitimate rights and interests of small and medium-sized investors, and provide more solid legal protection for the full implementation of the registration system for stock issuance.

The Guidance mainly contain the following contents: Firstly, it follows three basic principles: setting the needs of investors as the guide, meeting the diversified needs of different types of investors, focusing on outstanding issues and adopting pragmatic and feasible measures and clarifying the boundaries of responsibilities and improving the reasonable trust system. Secondly, the Guidance urges issuers and intermediaries to do their part in writing and preparing high quality prospectuses. It encourages issuers and intermediaries strengthen their collaboration and cooperation and carry out prospectus writing in earnest. When writing a prospectus, they should reduce compliance and redundant information, closely integrate the disclosure with the issuer's own characteristics, and focus on optimising the language and layout of the prospectus. At the same time, the criteria and procedures for sponsors and securities service providers to reasonably rely on the professional opinions or basic work of other intermediaries should be refined; it should be made clear that those who meet the conditions for reasonable reliance can be exempted from administrative legal liability in accordance with the law. Thirdly, the Guidance emphasizes the role of administrative supervision, self-regulation and market discipline mechanisms to guide the improvement of the quality of prospectus information disclosure. The relevant departments of the CSRC and the stock exchanges should form a joint effort to guide issuers and intermediaries to improve the quality of information disclosure in prospectuses by strengthening audit guidance and improving systems and rules. Fourthly, the Guidance strengthens accountability to crack down on fraudulent information disclosure in accordance with the law and to firmly guard the bottom line of truthful, accurate and complete information disclosure. For cases that do not constitute falsification of information disclosure, but the prospectus has unclear expressions, confusing logic, contradictions, inconsistent expressions of the same facts and substantial differences, seriously affecting the understanding of investors, etc., supervisory measures or disciplinary measures will be taken in accordance with the law to ensure the implementation of measures to improve the quality of information disclosure in prospectuses.

Improving the quality of information disclosure in prospectuses is a long-term and systematic task that requires the joint efforts and synergies of all parties concerned. In the next step, the CSRC will conscientiously implement the concepts and principles established in the Guidance in its specific supervisory work, revise and improve the system rules, promote continuous improvement of the quality of prospectus information disclosure, and lay a good foundation for the full implementation of the registration system for stock issuance.

中国证券监督管理委员会发布《关于注册制下提高招股说明书信息披露质量的指导意见》

2022 年 1 月 28 日，为进一步推动提高招股说明书信息披露质量，中国证券监督管理委员会（证监会）发布了《关于注册制下提高招股说明书信息披露质量的指导意见》(以下简称《指导意见》)。

招股说明书是注册制下股票发行阶段信息披露的主要载体，是投资者作出价值判断和投资决策的基本依据，是企业发行上市过程中最核心、最重要的法律文件。在注册制改革试点过程中，招股说明书信息披露质量得到提升，但仍存在可读性不高、投资决策相关性和信息披露针对性有待增强等问题，市场各方反映较多。出台《指导意见》，通过一系列措施提高招股说明书信息披露质量，让招股说明书成为普通投资者愿意看、看得懂的信息披露文件，帮助中介机构减少重复劳动、归位尽责，是提升各方对注册制改革的获得感，保护中小投资者合法权益，为全面实行股票发行注册制提供更加坚实法治保障的重要举措。

《指导意见》主要包含以下内容:一是基本原则。坚持以投资者需求为导向，满足不同类型投资者多元化需求。坚持问题导向，聚焦突出问题，采取务实可行措施。坚持归位尽责，厘清职责边界，完善合理信赖制度。坚持综合施策，多措并举推动提高招股说明书信息披露质量。二是督促发行人及中介机构归位尽责，撰写与编制高质量的招股说明书。发行人及中介机构应当加强协作配合，认真开展招股说明书撰写工作。在撰写招股说明书时，应当减少合规性信息和冗余信息，紧密结合发行人自身特点进行披露，并注重优化招股说明书语言表述和版式设计。同时，细化保荐人和证券服务机构合理信赖其他中介机构专业意见或者基础工作的标准、程序;明确符合合理信赖条件的，可以依法免除行政法律责任。三是充分发挥行政监管、自律监管和市场约束机制作用，引导提高招股说明书信息披露质量。证监会相关部门和证券交易所应当通过加强审核引导、完善制度规则等方式，

形成工作合力，引导发行人及中介机构提高招股说明书信息披露质量。四是强化责任追究。依法从严打击信息披露造假行为，牢牢守住信息披露真实、准确、完整的底线。对于虽不构成信息披露造假，但招股说明书存在内容表述不清、逻辑混乱、相互矛盾、同一事实表述不一致且有实质性差异、严重影响投资者理解等情形的，依法采取监管措施或者纪律处分，确保提高招股说明书信息披露质量各项措施落地落实。

提高招股说明书信息披露质量是一项长期性、系统性工作，需要有关方面共同努力、发挥合力。下一步，证监会将在具体监管工作中认真落实《指导意见》确立的理念和原则，修改完善制度规则，推动不断提高招股说明书信息披露质量，为全面实行股票发行注册制奠定良好基础。

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