

Takeovers Bulletin

Highlights

- Practice Note 7 (PN 7) revised to take into account treatment of right-of-use assets
- Public censures of CLSA Limited, CITIC Securities Brokerage (HK) Limited, Beijing Enterprises Holdings Limited and their representatives for Share Buy-backs Code breaches
- Note 2 on dispensations from Rule 26 of the Takeovers Code
- Appointments and reappointments to the takeovers-related committees
- Quarterly update on the activities of the Takeovers Team

1 The equivalent of Hong Kong Financial Reporting Standard 16 (HKFRS 16) 'Leases'.

Recently, we have been consulted on a number of occasions about whether ROU assets as defined under IFRS 16 should be regarded as a company's property assets for the purposes of Rule 11.1(f).

Previously, under International Accounting Standard 17 (IAS 17) 'Leases', a lessee was required to make a distinction between a finance lease (on balance sheet) and an operating lease (off balance sheet). In January 2016, the International Accounting Standards Board issued IFRS 16 to supersede IAS 17. Under IFRS 16, the lessee is required to recognise an ROU asset for its right to use the asset under a lease and its corresponding liability without the need to differentiate between a finance lease and an operating lease. In essence, unless exemptions apply, lessees are required to bring all contracts which meet the definition of a "lease" under IFRS 16 onto the balance sheet. The accounting treatment for lessors remains largely unchanged.

IFRS 16 became effective for annual reporting periods beginning on or after 1 January 2019.

Although IFRS 16 treats the right to use the asset under a lease as an asset on the company's balance sheet, the lessee does not have legal ownership of the underlying leased asset as it remains with the lessor. For this reason, ROU assets should not normally be regarded as a company's property assets for the purposes of the Takeovers Code. It follows that the values of these ROU assets should normally be excluded when determining whether a company has significant property interests of 15% and 50% under Rule 11.1(f).

If in doubt, the Executive should be consulted at the earliest opportunity.

Public censures of CLSA, CSB, Beijing Enterprises and others for Share Buy-backs Code breaches

On 30 December 2019, we publicly censured nine entities and individuals for share buy-back transactions in Beijing Enterprises Holdings Limited conducted in 2016 in breach of the Code on Share Buy-backs.

The censured parties were:

CLSA Limited
Andrew James WALTERS
Stuart Richard WILSON
CITIC Securities Brokerage (HK) Limited (CSB)
Ka Yip Eddy LAU
King Yuen LAU
Stephanie LI
Beijing Enterprises Holdings Limited
Woon Cheung Eric TUNG

In February and May 2016, CLSA on behalf of its institutional clients and CSB on behalf of Beijing Enterprises carried out coordinated trades which allowed Beijing Enterprises to buy back more than 18 million of its shares on The Stock Exchange of Hong Kong Limited. These on-market trades were in fact pre-arranged and pre-agreed, and in substance off-market share buy-backs which required approvals from the Executive and Beijing Enterprises' independent shareholders under Rules 1 and 2 of the Code on Share Buy-backs.

In effecting the pre-arranged trades, the conduct of CLSA, CSB and their licensed persons fell short of the standards expected of them under the Codes, and shareholders of Beijing Enterprises were deprived of the opportunity to vote on an important corporate action.



assets and, if appropriate, realise them to satisfy the outstanding debt in whole or in part. Therefore, the second paragraph of Note 2 envisages that no general offer obligation will be triggered upon a receiver or liquidator acquiring control over a

Full list of members of takeovers-related committees

Members are appointed for a term of two years until 31 March 2022 unless otherwise stated. The membership lists for the Panel, the Appeal Committee, the Disciplinary Chair Committee and the Nominations Committee are set out below.

Panel

The Panel hears disciplinary matters in the first instance, reviews rulings by the Executive at the request of any party dissatisfied with such a ruling and considers novel, important or difficult cases referred to it by the Executive. It also reviews, upon request by the SFC, the provisions of the Codes and the Rules of Procedure for hearings under the Codes and recommends appropriate amendments to the SFC.

Chairman

Mr CLARK Stephen Edward*

Deputy Chairmen

Mr CHAN Yuk Sing, Freeman*
Ms KO Teresa Yuk Yin, JP
Ms LAM Chor Lai, Celia
Mr MAGUIRE John Martin
Mr SCHWILLE Mark Andrew
Mr WEBB David Michael*

Members

Ms BIDLAKÉ Alexandra*
Ms BROWN Melissa*
Mr CHAN Che Chung
Ms CHARLTON Julia Frances
Mr CHENG Wai Sun, Edward, GBS, JP
Mr CHOW Koon Ying
Mr IP Koon Wing, Ernest*
Mr LEE Kam Hung, Lawrence, BBS, JP
Ms LEUNG Po Wah, Pauline
Mr LIU Yun Bonn*
Ms LLOYD Victoria Sally Tina

Mr NORMAN David Michael
Mr NORRIS Nicholas Andrew
Ms PARK Yoo-kyung *
Mr SABINE Martin Nevil
Mr SHAH Asit Sudhir *
Mr STEINERT Timothy A.
Mr TYE Philip Andrew
Mrs VAS Chau Lai Kun, Judy*
Mr WINTER Richard David
Mr WOLHARDT Julian Juul
Mr WONG Richard
Mr WONG Wai Ming*
Mr WONG Yu Tsang, Alex
Mr WOO Ka Biu, Jackson*
Ms YU Ka Po, Benita
Mr YUEN Ka Fai*

Appeal Committee

The Appeal Committee reviews disciplinary rulings of the Panel for the sole purpose of determining whether any sanction imposed by the Panel is unfair or excessive. It comprises a Chairman who is a member of the Disciplinary Chair Committee and other members of the Panel who are selected on a case-by-case basis.

Disciplinary Chair Committee

Members are nominated by the Nominations Committee on the basis that they are duly experienced senior counsels. Their role is to act as Chairman of the Panel in disciplinary proceedings

Nominations Committee

The Nominations Committee nominates members of the Panel, Appeal Committee and Disciplinary Chair Committee.

Ex officio Members

Mr ALDER Ashley Ian, JP (Chairman)
Mr CLARK Stephen Edward
Mr HO Yin Tung Brian

Members

Mr LUI Tim-leung Tim, SBS, JP
Dr WONG Ming Fung William, SC, JP

Alternate members to CLARK Stephen Edward

Mr CHAN Yuk Sing Freeman
Ms KO Teresa Yuk Yin, JP
Ms LAM Chor Lai, Celia
Mr MAGUIRE John Martin
Mr SCHWILLE Mark Andrew
Mr WEBB David Michael

A full list of members of the Panel, Appeal Committee, Disciplinary Chair Committee and Nominations Committee can be found in the "Regulatory functions – Listings & takeovers – Takeovers and Mergers – Takeovers Panel and related committees" section of the SFC website.

Quarterly update on the activities of the Takeovers Team

In the three months ended 31 December 2019, we received 14 takeovers-related cases (including privatisations, voluntary and mandatory general offers and off-market and general-offer share buy-backs), three whitewashes and 67 ruling applications.

Useful links

- The Codes on Takeovers and Mergers and Share Buy-backs
- Practice notes
- Decisions and statements
- Previous *Takeovers Bulletins*

All issues of the *Takeovers Bulletin* are available under 'Published resources – Newsletters – Takeovers Bulletin' on the SFC website at www.sfc.hk.

Feedback and comments are welcome and can be sent to takeoversbulletin@sfc.hk.

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