

Takeovers Bulletin

Highlights

Takeovers Panel's decision on granting a special waiver from the general offer obligation

The Takeovers Panel has ruled that a special waiver from the general offer obligation may be granted to Broad Gongga Investment Pte. Ltd. as a result of a possible foreclosure sale by third-party creditors of Jinke Property Group Company Limited of its interest in Jinke Smart Services Group Co. Ltd. in a seller-forced disposal.

Broad Gongga consulted the Executive on whether a seller-forced disposal would trigger a mandatory general offer obligation. While the Executive would not normally consider hypothetical questions, the matter was referred to the Panel as there were novel, important or difficult points at issue. The Panel met on 25 July 2022 to consider the case.

Both Broad Gongga and Jinke Property are shareholders of Jinke Smart Services and are acting in concert. In the event of a seller-forced disposal, Broad Gongga would become the single largest shareholder and the leader of the concert group. Pursuant to Note 1 to Rule 26.1 of the Takeovers Code, the seller-forced disposal would trigger

a mandatory general offer on the part of Broad Gongga for Jinke Smart Services.

The Panel considered the special circumstances surrounding the seller-forced disposal, including that Broad Gongga would have no control over the process, and decided that a special waiver from the general offer obligation would, in principle, be appropriate. However, as the seller-forced disposal had yet to occur, the Panel did not consider it appropriate to grant a waiver in a hypothetical situation. Broad Gongga should apply for the special waiver as and when a seller-forced disposal occurs or is imminent, and the Executive should consider the application in accordance with the principles decided by the Panel in the decision.

A copy of the [Panel's decision](#) issued on 30 August 2022 is available in the "[Regulatory functions – Corporates – Takeovers and mergers – Decisions and statements – Takeovers and Mergers Panel and Takeovers Appeal Committee decisions and statements](#)" section of the SFC website.



The Panel considered that the transaction involved a discharge of Chau's liability under the loan, which was a favourable condition to him as a shareholder, and this constituted a special deal under the Takeovers Code. It did not matter whether Chau made an overall gain or loss in the arrangement, or whether or not he was involved in the negotiation of the transaction. Given that the benefit received by Chau is quantifiable, it should be extended to all other Suncity shareholders and reflected in the offer price.

Rule 25 of the Takeovers Code aims to prevent a shareholder from receiving more than others in the context of an offer and to ensure that shareholders are equally treated under General Principle 1. However, not all special deals are prohibited and the Executive may grant consent to a special deal subject to the procedural safeguard (for example, majority shareholders' approval) provided under the Notes to Rule 25 guaranteeing the interests of shareholders in accordance with the code's

Regulatory

Decision on the proposed takeover of the company

Application for consent to the proposed takeover of the company

