

On 2 July 2015, the Takeovers and Mergers Panel (Takeovers Panel) imposed cold shoulder orders against Chow Yei Ching, Oscar Chow Vee Tsung and Joseph Leung Wing Kong and publicly censured them for breach of the Takeovers Code.

The cold shoulder order against Chow Yei Ching denies him direct or indirect access to the securities markets in Hong Kong for 10 years from 2 July 2015 to 1 July 2025. Oscar Chow and Joseph Leung are denied direct or indirect access to the securities markets in Hong Kong for two years from 2 July 2015 to 1 July 2017.

We commenced disciplinary proceedings on 20 November 2013 against Chow Yei Ching, Oscar Chow and Joseph Leung before the Takeovers Panel. On 16 April 2015, the Takeovers Panel published its written decision setting out the reasons

under the Takeovers Code when they acted in concert with the late Nina Kung to obtain and consolidate control of ENM Holdings Limited through the acquisition of voting rights and failed to make a general offer as required.

The Takeovers Panel's decision on sanctions and the cold shoulder orders can be found in the "Regulatory functions – Listings & takeovers – Takeovers & Mergers – Decisions & statements – Takeovers and Mergers Panel and Takeovers Appeal Committee decisions and statements" and the "Regulatory functions – Listings & takeovers – Takeovers & Mergers – Decisions & statements – Current cold shoulder orders" sections of the SFC website.

- Takeovers Panel imposes sanctions for breach of mandatory offer requirement
- Independent vote required for underlying transactions in whitewash cases
- Update on post-publication review of Schedule compliance
- Reminder to submit advanced drafts of documents for vetting
- Early consultation on employee
- Quarterly update on the activities of the Takeovers Team

- Directors' service agreements under paragraph 13 of Schedule II — these include service contracts with the offeree company's associated companies.

give rise to a presumption that the trustees are acting in concert with the directors or the controlling shareholder(s). We will consider all relevant factors in considering whether the trustees of the EBT are independent of the directors or controlling shareholder(s), including:

- the identities of the trustees;
- the composition of any remuneration committee;
- the nature of the funding arrangements;
- the percentage of the issued share capital held by the EBT;
- the number of shares held to satisfy awards made to directors;
- the number of shares held in excess of those required to satisfy existing awards;
- the prices at which, method by which and persons from whom existing shares have been or are to be acquired;
- the established policy or practice of the trustees as regards decisions to acquire shares or to exercise votes in respect of shares held by the EBT;
- whether or not the directors themselves are presumed to be acting in concert; and
- the nature of any relationship existing between a controlling shareholder (or a group of shareholders acting, or presumed to be acting, in concert) and both the directors and the trustees.

We wish to remind issuers, EBT trustees and advisers that the Executive must be consulted **in advance** if an EBT proposes to acquire shares that may have implications under Rule 26.1. As the review of these cases is typically time-intensive, early consultation is strongly encouraged.

In the three months ended 30 June 2015, we received 13 takeovers-related cases (including privatisations, voluntary and mandatory general offers and off-market and general-offer share buy-backs), 18 whitewashes and 82 ruling applications.

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