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Between 2000 and 2002, Mr Chow acquired a total of 160 million shares of ENM (approximately 9.69% of ENM's issued capital) on Ms Kung's behalf and at her request. Mr Chow paid for the purchase of the ENM shares and was subsequently reimbursed by Ms Kung. The reimbursement was handled by Mr Oscar Chow and Mr Leung.

Mr Chow held the ENM shares under four British Virgin Island (BVI) companies he owned through the issuance of bearer shares until December 2009. To comply with the changes to BVI law requiring greater transparency in the ownership of bearer shares, Mr Chow arranged for the ownership of the 160 million ENM shares to be split equally between one of his daughters and Mr Chow in December 2009.

The Takeovers Code treats persons acting in concert as being the equivalent of a single person and aggregates their shareholdings. Mr Chow's acquisitions increased the collective shareholding of the concert group in ENM from 34.64% to 44.33%, thereby triggering a mandatory general offer obligation under the Takeovers Code. However, none of the share acquisitions in ENM by Mr Chow on Ms Kung's behalf were publicly disclosed and remained undisclosed for a protracted period.

This type of arrangement, which is commonly known as "warehousing", enabled Ms Kung to secretly hold the ENM shares and avoid an obligation under the Takeovers Code to make a general offer. In consequence ENM shareholders were deprived of their fundamental right to receive a general offer to buy their shares.

Mr Chow brought the matter to the Executive's attention after receiving a letter in late April 2012 from the joint administrators of Ms Kung's estate making enquiries about shares of ENM that belonged to the estate.

The disciplinary proceedings before the Takeovers Panel will be held in public. Details of the proceedings can be found in the "Regulatory functions – Listings & takeovers – Takeovers & Mergers – Disciplinary proceedings before the Takeovers Panel" section on the SFC website.

Disciplinary action against Daqing Dairy and its directors

On 27 November 2013, the Executive publicly censured Daqing Dairy Holdings Limited (Daqing Dairy) and its directors, Mr Wang Lin and Mr Stephen Chiang Chi Kin for breaching Rule 8.4 of the Takeovers Code. The Executive also imposed a cold shoulder by denying Mr Wang direct or indirect access to the Hong Kong securities markets for 24 months until 27 November 2015.

At all material times Mr Wang and Mr Chiang were respectively Daqing Dairy's only executive director and only independent non-executive director.

On 18 April 2013, Daqing Dairy announced jointly with Radiant State Limited (Offeror) that the Offeror had acquired a 52.1% interest in Daqing Dairy from its former controlling shareholder and that the Offeror would make a general offer for the shares of Daqing Dairy pursuant to Rule 26.1 of the Takeovers Code. The Offeror posted an offer document to shareholders on 7 June 2013.

Despite repeated requests by the Executive to do so, Daqing Dairy and its directors failed to issue an offeree board circular to shareholders in respect of the general offer as required under Rule 8.4 of the Takeovers Code.

The failure to despatch the offeree board circular within the time prescribed in Rule 8.4 prejudiced the interests of Daqing Dairy shareholders as well as the investing public. As Daqing Dairy failed to provide its shareholders with its latest corporate and financial information, the board's recommendation and the advice of an independent financial adviser with respect to the offer as required by the Takeovers Code, shareholders were unable to reach a properly informed decision on the general offer envisaged by the Takeovers Code.

Daqing Dairy, Mr Wang and Mr Chiang accept that they have breached Rule 8.4 and have agreed to the disciplinary action against them under section 12.3 of the Introduction to the Takeovers Code. Their failure to issue a circular in accordance with Rule 8.4 of the Takeovers Code constitutes a breach of a fundamental provision of the Takeovers Code.

The Executive imposed severer sanctions against Mr Wang than the other two parties to reflect his overall role in causing the breach of Rule 8.4 of the Takeovers Code. At all relevant times, Mr Wang was the only executive director of Daqing Dairy and had clear responsibility to ensure that Daqing Dairy fully complied with the Takeovers Code.

The sanction against Mr Chiang, the only independent non-executive director of Daqing Dairy, reflects his role in the breach and the fact that he failed to take sufficient action to ensure that the offeree board circular was issued in compliance with Rule 8.4 of the Takeovers Code.

The Executive takes this opportunity to remind 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. If they do not, they may find by way of sanction, that the facilities of such markets are withheld in order to protect the interests of investors.

re that the offer is not to be made in accordance with the Takeovers Code.

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