

PANEL ON TAKEOVERS AND MERGERS

**Conditional Cash Offer (the "Offer") by
Continental Mariner Investment Company Limited ("CMIC") for
Lolliman Holdings Limited ("Lolliman")**

**Independence of Financial Adviser :
Anglo Chinese Corporate Finance, Limited ("Anglo Chinese")**

INTRODUCTION

1. The Panel met on 8 July 1993 to rule on a matter referred to it by the Takeovers and Mergers Executive (the "Executive") in relation to the Offer for Lolliman and the related disposal of shares in Hong Kong Daily News Holdings Ltd. ("HKDN"), namely whether it would be appropriate for Anglo Chinese to act as the independent financial adviser to the independent committee of the board of directors of Lolliman (the "Independent Committee").

BACKGROUND

2. On 18 June 1993, Emperor International Holdings Ltd. ("Emperor") and Emperor (China Concept) Investment Ltd. ("Emperor China") entered into a conditional agreement (the "Share Agreement" to sell their entire shareholdings in, and related shareholder's loan to, Silver Spirit Enterprise Ltd. ("Silver Spirit") and Golden Mountain Ltd. ("Golden Mountain") to CMIC, for a total cash consideration of HK\$472.1 million.

On completion, the sole asset of Silver Spirit and Golden Mountain would be a 60% shareholding in Lolliman. The total consideration represents an effective price of \$0.65 per share in Lolliman. Lolliman also entered into a conditional agreement (the "Disposal Agreement") with Emperor China to dispose of Lolliman's 33.2% interest in HKDN to Emperor China for a cash consideration of \$200 million (the "Disposal"). The Share Agreement and the Disposal Agreement are inter-conditional. The Disposal constitutes a special deal under Rule 25 of the Code on Takeovers and Mergers (the "Code") for which the consent of the Executive is required. A joint announcement was subsequently issued by CMIC, Emperor, Emperor China, and Lolliman on 21 June 1993, which stated that Silver Points Assets Ltd., a wholly owned subsidiary of CMIC, would make a conditional cash offer for Lolliman upon completion of the Share Agreement. It was also announced

in the same announcement that Anglo Chinese had been appointed to advise the Independent Committee of Lolliman on the offer and the Disposal.

The Executive noted that Anglo Chinese had made an offer on behalf of Bo Shing Holdings Ltd., now renamed Emperor China, for Lolliman in October 1992. Anglo Chinese had also advised the independent shareholders of Emperor in relation to a connected transaction in December 1992 and had acted for Emperor in relation to a subscription of shares in Emperor by a PRC party in June 1993. The Executive therefore considered that the position of Anglo Chinese was similar to that of Internationale Nederlanden Capital Markets (Hong Kong) Limited ("ING") in relation to a general offer for Pacpo Holdings Limited ("Pacpo") in January 1993. In that case, the Panel upheld the Executive's ruling that it was not appropriate for ING to act as the independent financial adviser to Pacpo's minority shareholders regarding the offer for Pacpo because ING had acted for the controlling shareholder of Pacpo in a general offer made by such controlling shareholder for Pacpo within the past twelve months. In view of the Pacpo precedent, the Executive was unable to accept the appointment of Anglo Chinese and referred the matter to the Panel for a ruling.

Code Issues Regarding Independence of Financial Adviser

is reasonably likely to effect the objectivity of his advice." Note 1 provides some examples of possible conflicts of interest. Note 2 deals with a particular situation regarding an offer made by or with the co-operation of controlling shareholders. Rules 2.6 and 2.7 and Notes 1 and 2 are attached as **Appendix 1**.

7. Rule 2 is, along with all the other Rules of the Code, subject to the overriding statement in the Introduction to the General Principles that "it is impracticable to devise rules in sufficient detail to cover all circumstances which can arise in offers. Accordingly, persons engaged in offers should be aware that the spirit as well as the precise wording of the General Principles and Rules must be observed. Moreover, The General Principles and the spirit of the Code will apply in areas or circumstances not explicitly covered by any Rule."

Decision Regarding Independence of Anglo Chinese

8. The Panel noted that the facts of this case were similar to those of an earlier case which was the subject of an application to the Panel for a review of the Executive's ruling in January 1993 that it was not appropriate for ING to act as the independent financial adviser to the minority shareholders of Pacpo in relation to an offer for Pacpo. In that case, the Panel upheld the Executive's ruling against ING because ING had acted for the controlling shareholder of Pacpo in an offer made by such shareholder for Pacpo within the past twelve months and had therefore a relationship with the controlling shareholder of the offeree as a result of which the minority shareholders of Pacpo could reasonably perceive a lack of independence on the part of ING. A copy of that ruling is attached as **Appendix 2**

contains the independent advice.

10. The Panel, in making its ruling, wishes to point out that in interpreting Rule 2, practitioners must always be cognizant of its main objective, which is the provision of clearly independent advice to independent directors of a company and to minority shareholders.

11. The Panel also wishes to emphasise that practitioners should consult the Executive before accepting any appointment if there is any possibility of a doubt about their independence which might arise. Practitioners should also bring to the attention of the Executive all information which may be relevant to the issue of independence in order that the Executive can make a fully informed decision.

12 July 1993

Appendix I

2.6 Persons not suited to give independent advice.

A person who has, or had, a connection, financial or otherwise, with the offeror or offeree company of a kind likely to create a conflict of interest will not be regarded as a suitable person to give independent advice.

2.7 Independent financial advisers and independent shareholders

A financial adviser will not normally be considered to be independent if he is considered to have a relationship with the offeror, the offeree company, or the controlling shareholder(s) of either of them, which is reasonably likely to affect the objectivity of his advice. If there are shareholders who are not independent because they have an interest in the proposed transaction other than their interest as a shareholder of the offeror or offeree company, as the case may be, the independent adviser should endeavour to represent the best interest of the offeror or the offeree company, respectively, by concerning itself only with the interests of the independent shareholders, i.e. those shareholders of the company who have no interest in the proposed transaction other than their interest as a shareholder of the company.

Notes

1. Conflicts of interest

A conflict of interest will exist, for instance, when there are significant cross-shareholdings between an offeror and the offeree company, when one or more directors are common to both companies or when a person is a substantial shareholder in both companies.

A financial adviser may have the opportunity to act for an offeror or the offeree company in circumstances where the adviser is in possession of material confidential information relating to the other party, for example, because it was a previous client or because of involvement in an earlier transaction. This will often necessitate the financial adviser declining to act, for example, because the information is such that a conflict of interest is likely to arise. Such a conflict will normally be incapable of resolution simply by isolating information within the relevant organisation or by assigning different personnel to the transaction.

2. Offer made by or with the co-operation of controlling shareholders.

The requirements for competent independent advice for shareholders is of particular important in respect of offer made by or with the co-operation of controlling shareholders. An independent adviser for the independent shareholders is essential and its res

Appendix 2

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**China Strategic Investment Limited ("China Strategic")
Offers for Pacpo Holdings Limited ("Pacpo")
and Hong Kong Building and Loan Agency Limited ("HKBLA")**

1. Independence of financial adviser :

Internationale Nerderlanden Capital Markets (Hong Kong) Limited ("ING")

2. Chain principle offer price under Note 8 to Rule 26.1 for HKBLA

Introduction

1. The Panel met on 5 January 1993 to review two rulings made by the Takeovers and Mergers Executive in relation to the offers for Pacpo and HKBLA. These rulings related to the independence of the financial adviser to the minority shareholders of Pacpo, and the chain principle offer price applicable to the offer by China Strategic for HKBLA. ING sougi

shares from trading continued. At the same time, the following appointments of financial advisers were announced : CEF Capital to China Strategic; ING to shareholders of Pacpo other than Red Hill and Pacific Concord; and Standard Chartered Asia Limited ("Standard

apply in areas or circumstances not explicitly covered by any Rule."

Decision Regarding Independence of Financial Adviser

8. The Panel is of the view that there are two important factors in this case. First, while the Panel's decision is not based on any doubts regarding ING's competence or conduct, the Panel is of the view that it is extremely important that the advice given be perceived to be totally independent. The Takeovers Committee has placed considerable importance on the perception of independence in past cases and the Panel intends to continue to apply this approach. It is a fact that there was a relationship earlier in the year between the controlling shareholder of the offeree and the proposed adviser to the offeree's minority shareholders. In the Panel's view the minority shareholders of Pacpo could reasonably perceive a lack of independence on the part of ING. Secondly, the Panel considers it significant that there are no independent directors of Pacpo such that minority shareholders will be looking only to the independent financial adviser for advice on the offer. Accordingly, the Panel rules that it would be inappropriate for ING to act as independent financial adviser to minority shareholders of Pacpo in this case.

9. The Panel, in making its ruling, wishes to point out that in interpreting Rule 2, practitioners must always be cognisant of its main objective, which is the provision of clearly independent advice to minority shareholders.

10. Practitioners should consult the Executive before accepting any appointment if there is any possibility of a doubt about their independence which might arise. Practitioners should also bring to the attention of the Executive all information which may be relevant to the issue of independence in order that the Executive can make a fully informed decision.

Information which may be relevant to the issue of independence in order that the Executive can make a fully informed decision.

Code Issues Regarding Chain Principle Offer Price

12. Note 8 to Rule 26.1 provides :

The chain principle

Occasionally, a person or group of persons acquiring statutory control of a company (which need not be a company to which the Code applies) will thereby acquire or consolidate control, as defined in the Code, of a second company because the first company itself holds a controlling interest in the second company, or holds voting rights which, when aggregated with

taking into account the nature of the businesses of Pacpo and HKBLA, asset values should be the basis for calculating the offer price in this case. The relevant asset values should be assessed on the information available to the offeror as at the time the transaction was entered into. In this case, the transaction entered into was a fixed-price deal with no possibility of a later adjustment to prices. The only information which was available to the offeror at the time the transaction was entered into was the publicly available information, namely the audited balance sheets of the relevant companies at 31 December 1991 as adjusted for 30 June 1992 interim results.

16. In the Panel's view, the offer price should be calculated objectively, without attempting to speculate what values should be attributed to the listing status of Pacpo or HKBLA. Accordingly, the offer price for HKBLA should be calculated as follows :-

		HK\$'000
1.	Net assets of HKBLA attributable to Pacpo, For its 67.62% shareholding (\$151,077 x 67.62%)	\$102,158
2.	Divide by adjusted net assets of Pacpo as at 30 June, 1992	\$141,833
		= 0.7203
3.	Multiply this fraction (0.7203) by the value of the entire issued share capital of Pacpo based on the offer price of \$3.82 per Pacpo share (total number of issued shares of Pacpo is 64,140,000)	\$245,015
		= \$176,484
4.	Divide the resulting number (\$176,484) by the number of shares held by Pacpo in HKBLA	8,639,583
		\$ 20.43 =====

