



## Quarterly Bulletin on Takeover Matters

(Third & Fourth Quarter 2015)

For the benefit of Takeovers Forum members, we have compiled various information and updates relating to takeover matters extracted from the official site of each Forum members. This bulletin will be published quarterly to serve as a centralized information hub on takeover matters.

*(Please click on the title of each item to go to the full write-up at the original source)*

### ***SECURITIES & FUTURES COMMISSION, HONG KONG***

#### **[Ruling on whether a general offer obligation will result from the proposed transfer of the controlling shareholding interest in The Cross-Harbour \(Holdings\) Limited by Y.T. Realty Group Limited to Mr. Cheung Chung Kiu and, if so, whether it should be waived](#)**

The Takeovers and Mergers Panel (the Panel) has ruled that a general offer obligation under the Takeovers Code will arise if Mr Cheung Chung Kiu proceeds with the possible acquisition of a controlling shareholder interest in The Cross-Harbour (Holdings) Limited. The Panel also agreed with the Takeovers Executive (Note 1) that a waiver of such general offer obligation should not be granted.

#### **[Ruling on a review of the decision of the Takeovers Executive to waive the mandatory general offer obligation which would otherwise have arisen for Mittal Steel Holdings AG in relation to the shares of China Oriental Group Company Limited](#)**

The Takeovers and Mergers Panel (Panel) has upheld the Takeovers Executive's (Executive) ruling to grant ArcelorMittal, a substantial shareholder of China Oriental Group Company Limited (China Oriental), a waiver from having to acquire all the shares of China Oriental under the mandatory general offer obligation of the Code on Takeovers and Mergers (Takeovers Code) upon the unwinding of certain put option arrangements.

#### **[Takeovers Bulletin \(Issue No. 35, December 2015\)](#)**

- Season's Greetings
- Takeovers Panel rules no general offer required for China Oriental

- Takeovers Panel's decision in relation to Cross-Harbour
- Impact of disqualifying transactions
- Dealing disclosure reminders to associates
- Quarterly update on the activities of the Takeovers Team

## **AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**

### **[15-206MR ASIC consults on remaking ASIC class orders on takeovers and schemes of arrangement](#)**

ASIC released a consultation paper proposing to remake six class orders that are due to expire ('sunset') between 2016 and 2019. The class orders relate to takeovers and schemes of arrangement.

### **[15-375MR ASIC remakes instruments on takeovers and schemes of arrangement](#)**

Following public consultation, ASIC has remade six legislative instruments that facilitate takeovers and schemes of arrangements.

### **[15-222MR ASIC publishes third report on corporate finance regulation](#)**

ASIC has published its third report on the regulation of corporate finance issues in Australia.

The report, which covers the period January to June 2015, provides companies and their advisers with insights into ASIC's regulatory approach in the corporate finance sector and aims to assist them with their associated legal and compliance obligations. It also demonstrates the important role ASIC plays in facilitating business in Australia while ensuring that the protection of the investment community is maintained.

### **[15-174MR ASIC appoints Morgan Stanley to sell shares in Richfield International Limited](#)**

ASIC has appointed Morgan Stanley Wealth Management Australia Pty Ltd (Morgan Stanley) to sell 9,920,638 ordinary shares in Richfield International Limited (RIS).

The sale follows a decision by the Takeovers Panel (the Panel) to vest the shares in the Commonwealth for sale by ASIC. The shares represent approximately 15.77% of RIS' issued capital.

### **[15-240MR ASIC remakes instruments and updates policy facilitating offers by foreign companies](#)**

Following public consultation, ASIC has remade six legislative instruments that facilitate Australian investors participating in foreign scrip offers, when appropriate safeguards are in place.

## ***TAKEOVERS PANEL OF AUSTRALIA***

### **[Takeovers Panel Releases Guidance Note 23 on Shareholder Intention Statements](#)**

The Takeovers Panel announced that it has published Guidance Note 23 "Shareholder Intention Statements".

### **[Panel Publishes Revised Guidance Note 14 – Funding arrangements](#)**

The Takeovers Panel published a revised version of Guidance Note 14 - Funding arrangements.

### **[Panel Releases Results of 2015 Stakeholder Survey](#)**

The Panel released the results of its 2015 stakeholder survey.

### **[Reason for Decision: Echo Resources Limited](#)**

The Panel, Garry Besson (sitting President), Richard Hunt and Denise McComish, declined to conduct proceedings on an application by Echo Resources Limited in relation to its affairs. The application concerned the failure to disclose, in a substantial holder notice, an alleged association between certain Echo shareholders, some of whom had requisitioned a general meeting to change the composition of Echo's board. The Panel considered that the evidence of association was not sufficient for it to conduct proceedings.

### **[Reason for Decision: Affinity Education Group Limited](#)**

The Panel, Geoff Brunsdon (Sitting President), Elizabeth Bryan AM and Karen Evans-Cullen, made a declaration of unacceptable circumstances in relation to the affairs of Affinity Education Group Limited. The application concerned contraventions of s606, the substantial holding provisions and beneficial interest provisions by G8 and parties alleged to be associated with G8. The Panel considered that parties were associated, made a declaration of unacceptable circumstances and ordered divestment of Affinity shares, withdrawal rights and disclosure.

### **[Reason for Decision: Australian Industrial REIT](#)**

The Panel, Ron Malek, Tony Osmond and Robert Sultan (sitting President), declined to conduct proceedings on an application by Fife Capital Funds Limited as responsible entity of Australian Industrial REIT in relation to the affairs of ANI. 360 Capital Investment Management Limited as responsible entity of the 360 Capital Industrial Fund had made an off-market takeover bid for ANI. Fife Capital submitted that statements in a notice distributed by 360 Capital to ANI unitholders were misleading. The Panel considered that the statements were not materially misleading in the context of the long running bid. Given that 360 Capital had issued a clarifying statement and it had been open to Fife Capital to make its own corrective announcement, the Panel concluded there was no reasonable prospect that it would declare the circumstances unacceptable.

### **Reason for Decision: CuDeco Limited**

The Panel, Alex Cartel, James Dickson (sitting President) and Elizabeth Hallett, declined to conduct proceedings on an application by Neville Lowe, a shareholder of CuDeco Limited representing 97 shareholders. The Applicant submitted (among other things) that CuDeco's proposed rights issue had a control effect and there was deficient disclosure including in relation to the rights issue, its underwriters and the combined voting power of substantial shareholders. The Panel considered that the application was premature because CuDeco had not lodged its rights issue prospectus. CuDeco announced that it would withdraw its rights issue following completion of a share placement with an institutional investor and proceed with a revised rights issue. Following this, the Panel declined to conduct proceedings.

### **Reason for Decision: Resource Generation Limited**

The Panel, Stephanie Charles, David Friedlander and Nora Scheinkestel (sitting President), made a declaration of unacceptable circumstances in relation to the affairs of Resource Generation Limited. The application concerned, among other things, the failure to disclose an alleged association between 3 Resource Generation shareholders 2 of whom were members of a debt club seeking to provide new project financing to the company. One of the shareholders (Altius) had requisitioned a general meeting to change the composition of the Resource Generation board. The Panel considered that 2 of them (Noble and Altius) were associated for the purpose of controlling or influencing the composition of the board of Resource Generation, made a declaration of unacceptable circumstances and ordered disclosure.

## ***SECURITIES AND EXCHANGE COMMISSION, THAILAND***

### **Public hearing on draft revision to tender offer rules on whitewash resolution**

The SEC is seeking public comments on the proposed revision to the tender offer rules concerning shareholders' approval (whitewash resolution) for business takeover and other related rules.

The draft amendment, having previously undergone a focus group consultation, aims to remove impractical procedures and enhance consistency of relevant provisions under the principle of sufficient disclosure to support shareholders' decision making. There would be no changes to the key principles or the obligations in relation to tender offer.

### **Settlement Committee imposes fines on MAKRO insider trading**

The SEC Settlement Committee has imposed fines on (1) Korsak Chairasmisak, (2) Piyawat Titasattavorakul, (3) Pittaya Jearavisitkul, and (4) Athueck Asvanund at a total amount of 33,339,500 baht for using inside information to purchase shares of Siam Makro Public Company Limited (MAKRO), and (5) Somsak Chiarawisithkul and (6) Areeya Asvanund at a separate, equal amount of 333,333.33 baht for aiding and abetting in the aforesaid insider trading.

***SECURITIES AND EXCHANGE BOARD OF INDIA***

**[Details of open offers made under SEBI \(substantial acquisition of shares and takeovers\) regulations, 1997 and SEBI \(substantial acquisition of shares and takeovers\), regulations, 2011](#)**

Details of open offers made during the period from April 1, 2015 to December 31, 2015