



## Quarterly Bulletin on Takeovers Matters

**(Third Quarter 2018)**

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 member. 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***

#### **[Takeovers Bulletin - Issue No. 46 - September 2018](#)**

The SFC's Takeovers Bulletin is a newsletter to help participants in Hong Kong's financial markets better understand the Codes on Takeovers and Mergers and Share Buy-backs.

In its September 2018 issue, the following matters were highlighted:

- Cold shoulder order imposed on Liang Guosheng for breach of mandatory offer requirement
- Revisions to Practice Note 20 – Details of financial advisers
- Quarterly update on the activities of the Takeovers Team

#### **[Takeovers Executive of the SFC sanctions Mr Liang Guosheng for breaching Rule 26.1 of the Takeovers Code](#)**

30 July 2018 - The SFC today publicly censures and imposes a 24-month cold-shoulder order against Mr Liang Guosheng (“Mr GS Liang”) for breaching the mandatory general offer obligation under Rule 26.1 of the Code on Takeovers and Mergers (“Takeovers Code”). Mr GS Liang will be denied direct or indirect access to the Hong Kong securities market for a period of 24 months commencing on 30 July 2018 to 29 July 2020.

## **SFC amends takeover rules**

13 July 2018 - The Securities and Futures Commission (SFC) today released consultation conclusions on proposed amendments to the Codes on Takeovers and Mergers and Share Buy-backs (Codes). The amended Codes, gazetted today, will apply with immediate effect.

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

### **Tikforce Limited - Panel declines to conduct proceedings**

26 August 2018 - The Panel, James Dickson, Paula Dwyer (sitting President) and Bruce McLennan, declined to conduct proceedings on an application by a group of shareholders in relation to the affairs of Tikforce Limited. The application concerned a notice of meeting containing a resolution approving the issue of shares and options of Tikforce in connection with the conversion of convertible notes. The Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable.

### **Baraka Energy and Resources Limited - Panel declines to conduct proceedings**

24 August 2018 - The Panel, Bruce Cowley, Sarah Rennie and Nicola Wakefield Evans (sitting President), declined to conduct proceedings on an application by GTT Global Opportunities Pty Ltd in relation to the affairs of Baraka Energy and Resources Limited. The application was made in the context of a requisitioned general meeting and concerned alleged association between shareholders of Baraka and contravention of section 671B of the Corporations Act 2001. The Panel considered that it was not provided with a sufficient body of material to justify making further enquiries as to the alleged association and accordingly, there was no reasonable prospect that it would declare the circumstances unacceptable.

### **Bullseye Mining Limited - Panel declines to conduct proceedings**

21 August 2018 - The Panel, Richard Hunt (sitting President), Rory Moriarty and Neil Pathak declined to conduct proceedings on an application by Bullseye Mining Limited in relation to its affairs. The application concerned whether two Bullseye shareholders, who had made separate requisitions to call and arrange a general meeting to consider resolutions to replace directors, were associates with each other and other Bullseye shareholders. The Panel considered there was an insufficient body of material to justify the Panel making further enquiries as to whether the requisitioning shareholders were associated with other Bullseye shareholders that would result in an acquisition of a relevant interest in breach of s606.

### **Realm Resources Limited - Declaration of unacceptable circumstances**

30 July 2018 - The Panel, Kelvin Barry, Teresa Dyson and Rod Halstead (sitting President), made a declaration of unacceptable circumstances in relation to the affairs of Realm Resources Limited. The application concerned an off-market takeover bid made by T2 (refers to either Taurus Funds Management Pty Limited as manager of Taurus Resources No. 2 LP and Taurus Resources No. 2 Trust or T2 Resources Fund Pty Limited which is the bidder) for 100% of the ordinary shares in Realm that it or its associates did not already own. The Panel considered that, in combination, the continuing suspension of Realm, the recognition by T2 of the improved financial and operational position of Realm, actions taken by T2 and its nominee directors (including T2 changing its position in relation to a proposed capital raising) and statements in the bidder's statement had the potential to coerce Realm shareholders to accept the T2 bid. The Panel made a declaration of unacceptable circumstances, orders extending the bid period and (as a consequence) providing withdrawal rights. The Panel also accepted undertakings.

### **Molopo Energy Limited 10 & 11 - Declaration of unacceptable circumstances**

30 July 2018 - The Panel, Christian Johnston (sitting President) Rebecca Maslen-Stannage and John O'Sullivan, made a declaration of unacceptable circumstances in relation to the affairs of Molopo Energy Limited. The application concerned an off-market takeover bid for Molopo by Aurora. The Panel found that Molopo's failure to disclose certain transactions and events in accordance with its disclosure obligations meant that the acquisition of control over voting shares in Molopo has not taken place in an efficient, competitive and informed market. In addition, by virtue of Molopo taking those actions, Aurora's bid may be withdrawn or lapse in circumstances where Molopo shareholders were not offered a choice between those actions and Aurora's bid. The Panel made compensation and costs orders in favour of Aurora.

### **Guidance Note 1 - Unacceptable Circumstances - Public Consultation Response Statement**

11 July 2018 - On 14 March 2018, the Takeovers Panel released a Consultation Paper seeking public comments in relation to proposed revisions to Guidance Note 1 on Unacceptable Circumstances. The proposed revisions give an example of unacceptable circumstances following a last and final statement in relation to a takeover bid.

Comments on the Consultation Paper were due by 20 April 2018. The Panel received submissions from Arnold Bloch Leibler, ASIC, Herbert Smith Freehills, the Law Council,<sup>1</sup> MinterEllison and Mr Simon Mordant AM (in his personal capacity). The Panel thanks the respondents for their comments. Consistent with the Panel's published policy on responding to submissions, this statement sets out the material comments received by the Panel and the Panel's response.

### **Atlas Iron Limited - Panel declines to conduct proceedings**

10 July 2018 - The Panel, Peter Day (sitting President), Diana Nicholson and Karen Phin declined to conduct proceedings on an application by NCZ Investments Pty Ltd in relation to the affairs of Atlas Iron Limited. Atlas is the subject of an off-market takeover bid from Redstone Corporation Pty Ltd (a subsidiary of Hancock Prospecting Pty Ltd). Following discussions with the Panel and ASIC, Redstone agreed to incorporate disclosures from its supplementary bidder's statement in a replacement bidder's statement (including further information in relation to its intentions) and clarify the operation of the bid's conditions. Given that, the Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable.

## ***NEW ZEALAND TAKEOVERS PANEL***

### **Guidance Note - Costs Recovery**

18 September 2018 – This Guidance Note summarises how costs reimbursements operate under the Takeovers Act 1993. It also provides information on how the Panel considers claims for reimbursement should be made and key aspects of the Panel's approach to dealing with disputes which come before it.

### **Guidance Note - Schemes of Arrangement**

17 August 2018 - This Guidance Note sets out key information relating to schemes of arrangement involving Code companies. The Guidance Note addresses the Companies Act requirements as well as the Panel's role in relation to schemes of arrangement.

### **Smith & Caughey's Holdings Limited - Exemption Notice 2018**

14 August 2018 - Exemptions for relevant shareholders from rule 6(1) of the Code in respect of any future increase in voting control as a result of transfers of voting securities pursuant to clause 7 of the company's constitution.

### **Chow Group Limited - Independent Expert Report July 2018**

On 9 July 2018, the Takeovers Panel appointed TDB Advisory Limited (TDB) as the independent expert to determine the fair and reasonable value of the shares in Chow Group Limited (now renamed RIS Group Ltd) under rule 57 of the Code. TDB has made its final determination and the report is now available to all shareholders.

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

### **Cases settled by the Settlement Committee**

26 September 2018 – The Settlement Committee fined the following parties for breaches of the Securities and Exchange Act relating to reporting on acquisitions or disposal of shares as well as disclosure on holdings of shares:

- Mr. Chanon Wangtal
- Mr. Porameth Rungrongtanin
- Mr. Sathit Roongwatanapak

## ***MONETARY AUTHORITY OF SINGAPORE***

### **Take-overs Bulletin Issue No.5 (August 2018)**

28 August 2018 – Monetary Authority of Singapore issues the Take-overs Bulletin Issue No. 5 which highlights the following matters:

- Welcome message
- Exemption of Connected Fund Managers and Principal Traders under the Code
- Reminder that an offer should not be announced with incomplete or unclear terms
- Advertisements and reminder letters
- H1 2018 Statistics on M&A activity

### **MAS issues prohibition order against Alan Tay Yeow Kee for insider trading**

31 July 2018 - The Monetary Authority of Singapore (MAS) has issued a 5-year prohibition order (PO) against Mr Alan Tay Yeow Kee. Mr Tay will be prohibited from carrying out any regulated activities and from taking part in the management, acting as a director, or becoming a substantial shareholder of any capital market services firm under the Securities and Futures Act (SFA). Mr Tay was a Vice President of CIMB Bank Berhad (CIMB). In 2011, he arranged for another person to purchase on his behalf the shares of two companies which were listed on the Singapore Exchange at the time, Qualitas Medical Group Limited (Qualitas) and Leeden Limited (Leeden). Mr Tay did this while in possession of non-public and price sensitive information that both companies had received takeover offers. He had obtained the inside information on the takeover offers by virtue of his position in CIMB. The prices of both Qualitas' and Leeden's shares rose after the takeover offers were announced by the companies. Mr Tay made a profit of around \$30,000 from the shares purchased with the privileged information.