



Quarterly Bulletin on Takeovers Matters

(Fourth Quarter 2019)

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

[Public censures of CLSA Limited, CITIC Securities Brokerage \(HK\) Limited, Beijing Enterprises Holdings Limited and their representatives in relation to breaches of the Code on Share Buy-backs](#)

30 December 2019 - The SFC publicly censures CLSA Limited, CITIC Securities Brokerage (HK) Limited, Beijing Enterprises Holdings Limited and their representatives for breaching the Code on Share Buy-backs in respect of share buy-backs conducted by Beijing Enterprises Holdings Limited.

[TAKEOVERS BULLETIN – Issue No. 51 – December 2019](#)

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 December 2019 issue, the following matters were highlighted:

- Takeovers Panel's decision on deducting dividend from offer price
- Special deal considerations for ordinary course of business transactions
- Early identification of connected fund managers and connected principal traders
- Signatories to confirmations under Note 3 to Rule 8.1
- Quarterly update on the activities of the Takeovers Team

Takeovers and Mergers Panel Decision

2 October 2019 - Ruling on whether Broadford Global Limited (“Broadford”) is permitted under the terms of its possible offer for the ‘H’ Shares in Dalian Port (PDA) Company Limited (the “Company”) set out in its Rule 3.5 possible offer announcement dated 4th June, 2019 (the “Rule 3.5 Announcement”) to deduct the dividend paid on 16th August, 2019 from the offer price in cash of HK\$1.0127 for each ‘H’ Share in the Company, other than ‘H’ Shares owned by or agreed to be acquired by Broadford and parties acting in concert with it.

TAKEOVERS PANEL OF AUSTRALIA

Benjamin Hornigold Limited 08R, 10R & 11R

29 November 2019 - The review Panel, Richard Hunt (sitting President), Diana Nicholson and Karen Phin, made minor variations to the declaration and orders made by the initial Panel in relation to the affairs of Benjamin Hornigold Limited. The review Panel otherwise agreed with the initial Panel’s conclusions, for substantially the same reasons.

Donaco International Limited 02

26 November 2019 - The Panel, Karen Evans-Cullen, Kerry Morrow and Tony Osmond (sitting President), declined to conduct proceedings on an application by Donaco International Limited in relation to its affairs. The application concerned whether certain Donaco shareholders who had attempted to requisition a general meeting to spill the Donaco board were associated with other shareholders. The Panel considered that Donaco did not provide a sufficient body of material to justify it making further enquiries as to whether there were any associations. The Panel considered that there was no reasonable prospect that it would declare the circumstance unacceptable.

Pacific Energy Limited

25 October 2019 - The Panel, Ron Malek (sitting President), Rory Moriarty and David Williamson declined to make a declaration of unacceptable circumstances in relation to the affairs of Pacific Energy Limited. Pacific Energy had entered into a scheme implementation deed with QIC Bidco for its acquisition. The application concerned the conduct of Pacific Energy in addressing a competing proposal, including agreeing to pay a break fee to the competing bidder (APC Bidco). The Panel considered that Pacific Energy had facilitated a materially higher offer and the agreement to pay the break fee to the competing bidder was not anti-competitive or coercive. The Panel was not satisfied that the circumstances were unacceptable.

Benjamin Hornigold Limited 09

21 October 2019 - The Panel, Christian Johnson, John Sheahan QC (sitting President) and Sharon Warburton, declined to conduct proceedings on an application by Benjamin Hornigold Limited in relation to its affairs. The application concerned whether the novation of the obligations to repay a loan, and the

variation of another loan, to Benjamin Hornigold operated as a lock-up device. The Panel considered there was no reasonable prospect that it would grant any substantive relief having regard to (among other things) the quantum and effect of the above transactions, the effect of developments since (including the close of the takeover bid by John Bridgeman Limited for all of the securities in Benjamin Hornigold on 13 September 2019) and the orders of the Panel in *Benjamin Hornigold Limited 05, 06, 07*. The Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable.

Benjamin Hornigold Limited 05, 06 & 07

14 October 2019 - The Panel, Christian Johnson, John Sheahan QC (sitting President) and Sharon Warburton, made a declaration of unacceptable circumstances in relation to the affairs of Benjamin Hornigold Limited because the placement of foreign currency banknotes by Benjamin Hornigold with King's Currency Exchange Pty Ltd effectively replaced a loan the subject of a previous order of the Panel and, individually and in conjunction with an extension of the period for the return of all banknotes placed by Benjamin Hornigold with King's Currency, operated as a lock-up device in relation to John Bridgeman's off-market takeover bid for Benjamin Hornigold.

Keybridge Capital Limited 02

2 October 2019 - The Panel, Amy Alston, Marissa Freund and Bruce McLennan (sitting President), declined to conduct proceedings on an application by Bentley Capital Limited and Messrs William Johnson, Simon Cato and Farooq Khan in relation to the affairs of Keybridge Capital Limited. The application concerned whether associations existed between certain groups of shareholders in Keybridge resulting in contraventions of s606 and the substantial holding provisions in the context of a board dispute and two general meetings convened to consider competing resolutions for removal of directors. The Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable.

NEW ZEALAND TAKEOVERS PANEL

Code Word - Issue 50 (November 2019)

- Limited partnership and control of code company voting rights
- Code to exclude small code companies
- Christmas closedown

Takeovers Panel Annual Report for 2019

25 November 2019 – The Takeovers Panel announced the publication of its annual report for 2019. The Panel monitored 23 transactions and Code company schemes of arrangement during the year.

Vector Limited – Exemption Notice 2019

6 November 2019 – Every person who becomes a trustee, or is a trustee, of Entrust is exempted from rule 6(1) of the Code in relation to any increase in that person’s voting control as a result of being appointed as a trustee, or as a result of a reduction in the number of trustees.

Panel Comments on New Zealand Oil & Gas Scheme Complaints

29 October 2019 - The Takeovers Panel has recently received, and investigated, several complaints from various shareholders of New Zealand Oil & Gas Limited (NZO) in relation to the proposed acquisition of minority interests in NZO by O.G. Oil & Gas Pte. Ltd under a scheme of arrangement (the Scheme).

SECURITIES AND EXCHANGE COMMISSION PHILIPPINES

SEC Panel Penalizes Shareholder Group in Furtive Takeover of The Medical City

25 November 2019 – A special hearing panel (SHP) at the SEC has imposed penalties totaling at least P50.25 million against the majority shareholders of Professional Services, Inc. for violation of the securities law when they surreptitiously took over the company behind The Medical City. In a resolution issued on November 22, the SHP found Viva Healthcare Limited, Viva Holdings (Philippines) Pre. Ltd. And Felicitas Antoinette, Inc. (FAI) liable for violating Section 18 of Republic Act No. 8799, or the Securities Regulation Code.