



Hong Kong

September 2017

## TAKEOVERS EXECUTIVE SANCTIONS FOR BREACH OF MANDATORY GENERAL OFFER OBLIGATION

### Introduction

In August 2017, the Securities and Futures Commission (**SFC**) publicly censured and imposed a 24-month cold shoulder order against Mr Yeung Wing Yee.<sup>1</sup> These sanctions were imposed as a consequence of Mr Yeung's breach of the mandatory general offer obligation under Rule 26.1 of the Code on Takeovers and Mergers (**Takeovers Code**). Mr Yeung failed to make a general offer when his interest in Union Asia Enterprise Holdings Limited (**Union Asia**), a company listed on the Growth Enterprise Market of The Hong Kong Stock Exchange Limited, crossed the 30% threshold in August 2016.

### Background

In July 2016, Mr Yeung became a shareholder of Union Asia. On 1 August 2016, he purchased approximately 228 million shares in Union Asia, increasing his shareholding interest from approximately 23.13% to approximately 31.13%. On 3 August 2016, he acquired additional shares and his shareholding interest in Union Asia increased to 32.87%.

Following Mr Yeung's disclosure of interest notice (**DI Notice**) filed under Part XV of the Securities and Futures Ordinance (Cap. 571) (**SFO**), Union Asia's board of directors became aware on 3 August 2016 of his increased interest. Union Asia then enquired as to Mr Yeung's intentions regarding the making of a mandatory general offer, and through his legal advisor, Mr Yeung indicated that he had no intention to make such an offer.

On 4 August 2016, Mr Yeung through his legal advisor wrote to the Executive stating that he had no intention to acquire control of Union Asia and that he had no obligation to make an offer. The Executive responded by pointing out the importance of complying with the mandatory general offer requirement under Rule 26.1 of the Takeovers Code.

### Breach of Takeovers Code

Rule 26.1 of the Takeovers Code states:

"Subject to the granting of a waiver by the Executive, when

(a) any person acquires, whether by a series of transactions over a period of time or not, 30% or more of the voting rights of a company; ...

that person shall extend offers, on the basis set out in this Rule 26, to the holders of each class of equity share capital of the company, whether the class carries voting rights or not,..."

On 1 August 2016 when Mr Yeung's interest in Union Asia passed the 30% threshold, a mandatory general offer obligation was triggered pursuant to Rule 26.1(a). Mr Yeung failed to make a general offer in breach of this obligation.

<sup>1</sup> [http://www.sfc.hk/web/EN/files/CF/pdf/Cold-Shoulder/Executive%20Statement\\_20170830\\_Eng.pdf](http://www.sfc.hk/web/EN/files/CF/pdf/Cold-Shoulder/Executive%20Statement_20170830_Eng.pdf)

## Sanctions

Mr Yeung submitted that he was ignorant of the Takeovers Code obligations and had not sought professional advice. He now accepts that he breached Rule 26.1(a) and deprived Union Asia's shareholders of the right to receive a general offer for their shares in the company.

Between 4 and 9 August 2016, trading in Union Asia shares was halted. On the day trading resumed, Mr Yeung sold approximately 89 million shares so that his shareholding interest fell below the 30% threshold.

The SFC imposed two sanctions in relation to Mr Yeung's breach of Rule 26.1 of the Takeovers Code:

- a public censure against Mr Yeung; and
- Mr Yeung has been denied direct or indirect access to the Hong Kong securities market from 30 August 2017 to 29 August 2019.

The sanctions reflect the expectations of the Takeovers Executive that persons who are actively engaged in the securities market must comply with the Takeovers Code, including seeking professional advice. Mr Yeung's conduct amounted to a clear breach of the Takeovers Code which merited strong disciplinary sanctions.

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