

Takeovers Executive of the SFC publicly censures Chen Chi-Te and Kenneth C.M. Lo in relation to breaches of the dealing provisions of the Takeovers Code

Disciplinary action against Chen Chi-Te and Kenneth C.M. Lo

1. The Executive publicly censures:
 - (a) Chen Chi-Te (“**Chen**”) for breaching Rules 21.2 and 22 of the Code on Takeovers and Mergers (“**Takeovers Code**”) as a result of his failure to (i) seek the Executive’s consent prior to selling shares in TCC International Holdings Limited and (ii) disclose his dealings in the shares of TCC International Holdings Limited.
 - (b) Kenneth C.M. Lo (“**Lo**”) for breaching Rules 21.3 and 22 of the Takeovers Code as a result of his failure to (i) seek the Executive’s consent prior to the purchase of shares in Taiwan Cement Corporation and (ii) disclose his dealings in the shares of Taiwan Cement Corporation.

Both Chen and Lo accept that they breached the Takeovers Code and agree to the disciplinary action taken against them under section 12.3 of the Introduction to the Takeovers Code.

Background and relevant provisions of the Takeovers Code

2. TCC International Holdings Limited (the “**Company**”)(stock code: 1136.HK) was listed on the Main Board of The Stock Exchange of Hong Kong Limited in October 1997. It is principally engaged in the import and distribution of cement in Hong Kong and the manufacture and distribution of cement, clinker, concrete and other cement-related products on the Mainland.
3. Taiwan Cement Corporation (“**TCC**”, or the “**Offeror**”)(stock code: 1101.TWSE) was listed on the Taiwan Stock Exchange in 1962. The principal activities of TCC consist of the production and distribution of cement, cement products and cement materials. Through a wholly-owned subsidiary, TCC International Limited, TCC holds approximately 63.05% of the ordinary shares and 99.98% of the convertible preference shares in the Company. Both Chen and Lo are directors of the Offeror.
4. On 20 April 2017, an offer period commenced for the Company when it and the Offeror¹ issued a joint announcement about a proposed privatisation of the Company by the Offeror by way of a scheme of arrangement.
5. Under the proposed privatisation, each ordinary shareholder will be entitled to receive either: (i) a cash alternative: cash of HK\$3.60 for each scheme share, or (ii) a share alternative: 0.42 TCC share for each scheme share. The scheme document in relation to the proposed privatisation was despatched to scheme shareholders on 24 August 2017.

¹ As stated in the joint announcement, TCC and its wholly owned subsidiary, TCC International Limited, are the Offeror in the proposed privatisation.

Relevant provisions under the Takeovers Code

6. *Rule 21.2 Restrictions on dealings during the offer*

Rule 21.2 requires that “[d]uring an offer period, the offeror and persons acting in concert with the offeror must not sell any securities in the offeree company except with the prior consent of the Executive and following 24 hours public notice that such sales might be made. Save as provided below, the Executive will not give consent for sales particularly where a mandatory offer under Rule 26 is being made. Sales below the value of the offer will not be permitted...”

7. *Rule 21.3 Restrictions on share dealings and transactions by offeror during securities exchange offers*

Rule 21.3 provides that “[e]xcept with the consent of the Executive, where the consideration under an offer includes securities of the offeror or a person acting in concert with it, neither the offeror nor any person acting in concert with it may deal in any such securities or conduct any on-market buy-back of such securities during the offer period...”

8. *Rule 22 Disclosure of dealings during offer period*

During an offer period, Rule 22 of the Takeovers Code requires parties to an offer and their respective associates (as defined in the Takeovers Code) to disclose their dealings in relevant securities (as defined in Note 4 to Rule 22) of the offeree company (and the offeror in securities exchange offers) conducted for themselves or on behalf of discretionary clients.

Measures taken by the Offeror regarding the dealing restrictions under the Takeovers Code before the commencement of the offer period

9. TCC held board meetings on 19 and 20 April 2017 to consider the proposed privatisation. At these meetings:

- (a) A memorandum on dealing restrictions and a guide for TCC directors under the Takeovers Code were circulated to all TCC directors.
- (b) TCC’s legal adviser explained and emphasised to TCC’s directors, among others, the importance of the rules and dealing restrictions and advised the directors that they should consult TCC or its advisers if in doubt.
- (c) Both Chen and Lo, among other TCC directors, signed (a) a responsibility letter to acknowledge responsibility for the information in the joint announcement and all subsequent documents issued under the proposed privatisation and to undertake to update TCC with any subsequent changes, and (b) a statement of interest declaring his/her interest in the Company and TCC and relevant dealings and an undertaking to notify TCC should the interests change.

- (d) TCC's financial adviser issued a letter on 24 April 2017 reminding the Offeror to comply fully with the relevant rules of the Takeovers Code.
- (e) On 27 April 2017, TCC circulated the minutes of the 19 and 20 April 2017 board meetings to all of its directors. The minutes were subsequently adopted.

Breaches of the Takeovers Code

- 10. During the course of finalising the scheme document, TCC became aware of Chen's and Lo's dealings during the offer period despite the restrictions under the Takeovers Code and informed the Executive of Chen's and Lo's dealings in writing on 5 August 2017.

Chen breached Rule 21.2 and Rule 22 of the Takeovers Code

- 11. Chen, as a director of the Offeror, is a party acting in concert with the Offeror. Accordingly, he is subject to the dealing restrictions under Rule 21 and the dealing disclosure obligations under Rule 22 of the Takeovers Code.
- 12. Chen held 0.20% (9,855,000 shares) in the Company through his related trusts, namely (i) the Teyu Trust as to 6,000,000 shares, and (ii) the TE Trust and the YU Trust as to 3,855,000 shares. The beneficiaries under these trusts are Chen and his family members. The trusts are managed by professional trustees.
- 13. Between 25 April and 28 June 2017, a total of nine trades in the shares of the Company were made by the trustees on behalf of the trusts at prices ranging from HK\$3.50 to HK\$3.56 (below the offer price of HK\$3.60).
- 14. The portfolio manager of the Teyu Trust discussed the disposals of 6,000,000 shares with Chen before commencing the transactions. As to the 3,855,000 shares in the Company held by the other two trusts, Chen directed the disposals himself.
- 15. After the disposal transactions, none of Chen, his close relatives, related trusts and companies controlled by any of them is interested in any shares of the Company.
- 16. The sale of shares in the Company by Chen's related trusts and the failure to disclose the dealings constituted breaches of Rules 21.2 and 22 of the Takeovers Code.
- 17. Chen forgot to inform the trustees of the dealing restrictions he had been advised about at TCC's board meetings on 19 and 20 April 2017. He also forgot to share the dealing restrictions memorandum prepared by TCC's adviser with the trustees. As such, the trustees were not aware of the implications of dealings in the Company's shares. Chen had sincerely apologised to TCC and emphasised that this was an inadvertent breach.
- 18. The Rule 22 dealing disclosure forms were filed with the Executive on 4 August 2017.

Lo breached Rule 21.3 and Rule 22 of the Takeovers Code

19. Lo, as a director of the Offeror, is a party acting in concert with the Offeror. Accordingly, he is subject to the dealing restrictions under Rule 21 and the dealing disclosure obligations under Rule 22 of the Takeovers Code.
20. Lo, together with his spouse and daughters (“**close relatives**”), controls four investment companies. At the commencement of the offer period on 20 April 2017, Lo indirectly held 400,000 shares in TCC through these four investment companies. The investment companies controlled by Lo acquired a total of 4,000,000 shares in TCC between 27 and 31 July 2017, increasing Lo’s interest in TCC to 4,400,000 shares (0.11%). The shares were acquired at between NT\$34.70 and NT\$35.00 per share. The closing price as at the last trading day (18 April 2017) before the publication of the joint announcement was NT\$36.45.
21. The purchases of TCC shares by Lo’s investment companies and the failure to disclose the dealings constituted breaches of Rule 21.3 and Rule 22 of the Takeovers Code.
22. Lo explained that the investment companies are operated by his close relatives and he is not a member of the board or management of these investment companies. The investment companies have a dedicated team of investment managers who assess and give advice to Lo and his family on the type of investments to make. Whilst he did not give instructions to execute the relevant trades, he and his wife were aware of the circumstances surrounding the purchase of TCC shares.
23. Lo forgot to mention to his close relatives about the dealings restrictions he had been advised about at the board meetings on 19 and 20 April 2017. He also forgot to share the dealing restrictions memorandum prepared by TCC’s adviser with them. He submitted that the dealings were the result of insufficient communication between him and his close relatives about the dealing restrictions during the offer period. Lo emphasised that this was an inadvertent breach without any improper intent (including any intent to breach the Takeovers Code).
24. The Rule 22 dealing disclosure forms were filed with the Executive on 4 August 2017.

Executive’s comments

25. The dealing restrictions in Rule 21 imposed on the offeror and its concert parties during the offer period, which include restrictions on dealings in the securities in the offeree company and the offeror company in the case of securities exchange offers, are designed to protect shareholders and ensure a fair and informed market.
26. The disclosure obligations under Rule 22 of the Takeovers Code are intentionally onerous to reflect the fact that a high degree of transparency is essential to the efficient functioning of the market in an offeree company’s shares during the critical period of an offer.

27. In reaching its decision to impose sanctions against Chen and Lo, the Executive paid particular regard to the standards of behaviour and integrity that might reasonably be expected of directors of the offeror which is also a listed company in Taiwan.
28. The Executive expects directors of a listed company to use the best of their abilities to comply with the Takeovers Code which may involve seeking professional advice as and when needed. The Executive notes that TCC's legal adviser had explained and reminded all TCC directors including Chen and Lo about the dealing restrictions and the dealing disclosure obligations at the relevant board meetings prior to the commencement of the offer period. They were also provided with a copy of the dealing restrictions memorandum. Both Chen and Lo were fully aware of the relevant restrictions, and their own actions directly led to the breaches under the Takeovers Code.
29. Whilst the Executive recognises Chen's and Lo's cooperation in relation to its review of this matter, the Executive considers the breaches in this case to be serious and they merit the present disciplinary action. Both Chen and Lo have accepted the disciplinary action taken against them under section 12.3 of the Introduction to the Takeovers Code.
30. The Executive wishes to take this opportunity to remind practitioners and parties who wish to take advantage of the securities markets in Hong Kong that they should conduct themselves in matters relating to takeovers and mergers in accordance with the Takeovers Code. If there is any doubt about the application of the Takeovers Code, the Executive should be consulted at the earliest opportunity.

7 September 2017