



By email < cficonsult@sfc.hk > and by post

26 September 2011

Our Ref.: C/CFC, M79392

Corporate Finance Division
Securities and Futures Commission
8th Floor, Chater House
8 Connaught Road Central
Hong Kong

Dear Sirs,

[Re: Consultation Paper on \(1\) the proposal to amend the requirements for property valuation in the Codes on Takeovers and Mergers and Share Repurchases; \(2\) the proposed amendment relating to confirmations of independence in placing and top-up transactions; and \(3\) the timing for payment of acceptances](#)

The Hong Kong Institute of Certified Public Accountants ("the Institute") has considered the above consultation paper, which seeks comments on the subject proposed amendments to the Codes on Takeovers and Mergers and Share Repurchases. The Institute's comments on the proposed amendments are provided below.

Part 1 Property valuation

The Institute has no objection to the proposed amendments to Rule 11.1(f) of the Takeovers Code so that property valuation requirements for a company holding significant property interests will be applicable only to transactions where the offeror is a related party and to transactions which involve a special deal that requires shareholder approval pursuant to Rule 25 of the Takeovers Code.

Rule 11.1(f) provides further guidance on the meaning of "significant property interests". It states that "[a]s a general guide, this ["this" is proposed to be replaced by "significant property interests"] should be taken to refer to a company or group of companies, the book value of whose property assets or consolidated property assets, respectively, exceeds 15% of the book value of total assets or total group assets, as the case may be".

Nevertheless, paragraph 9 of the consultation paper indicates that the Executive has already relaxed its approach to the strict application of Rule 11.1(f) in certain circumstances where strict application may be unduly burdensome. For example, properties of a mining company which are used for smelting or storage purposes or infrastructure such as roads at the mining site would be decided, on a case-by-case



basis, whether they should be regarded as property assets for the purpose of calculating the 15% threshold even though they may be accounted for, on a company's balance sheet, as "buildings" or "plant and buildings". We would like to clarify how the Executive draws a line to carve out certain assets, such as properties for smelting or storage purposes or infrastructure such as roads of a mining company for calculating the 15% threshold, given that such assets are considered to be part and parcel of a mine or a mining site.

Part 2 Confirmations of independence of placees

The Institute has reservations about the proposed amendment to note 7 on dispensations from Rule 26 of the Takeovers Code. There are some areas of ambiguity, in particular in relation to implementation aspects, which require further clarification.

The revised note 7 states that the Executive would expect the relevant financial adviser, placing agent and acquirer of the voting rights to take all appropriate and reasonable steps to ascertain and verify whether the acquirer is independent of, and not acting in concert with, the vendor. It is important that the market should have a clear understanding of what methods and supporting documents/evidence the SFC would normally expect to see to prove the independence of the placees. Without clearer guidance from the SFC, uncertainty could well arise in the market, amidst a diversity in practices.

The revised note 7 further states that the Executive will normally place significant reliance on the confirmations provided by the financial adviser, placing agent and acquirer of the voting rights when granting a waiver. Despite having granted the waiver, the Executive may make enquiries about the independence of the acquirer after the completion of the placing and top-up transaction. In the event that the acquirer of the voting rights is found to have acted in concert with the vendor, any waiver which has been granted would be invalidated and the Executive would take appropriate action including possibly requiring a general offer to be made.

We would like to ask for clarification of the following:

1. In what circumstances would the Executive make post-transaction enquiries about the independence of the placees (e.g., randomly or only on suspicious grounds) and up to how long after the transaction?
2. How an invalidation of a waiver and requirement for a general offer would work if the placing and top-up transaction has already been completed and the shares are being traded? We are concerned that this may cause disruption to the securities market.
3. Other than invalidating a waiver and requiring a general offer, as specified in the revised note 7, what alternative remedies/sanctions could be invoked?



Part 3 Timing of payment for acceptances

We agree with the proposed amendment to Rule 20.1 to change the prescribed time period of payment for acceptances from "10 days" to "7 business days".

We hope that the above comments are helpful. If you have any questions on the above or wish to discuss it further, please contact Mary Lam, the Institute's deputy director, specialist practices, by telephone on 2287 7086 or email < mary@hkicpa.org.hk >.

Yours faithfully,

Chris Joy
Executive Director

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