

**SECURITIES INDUSTRY COUNCIL**  
**(“SIC” OR THE “COUNCIL”)**  
**PUBLIC STATEMENT ON DELONG HOLDINGS LIMITED**

**Background**

On 27 September 2018, PrimePartners Corporate Finance Pte. Ltd. (“PPCF”) announced, on behalf of Best Grace Holdings Pte. Ltd. (the “Offeror”), an offer for Delong Holdings Limited (the “Offeree”) at S\$7.00 per share conditional upon 90% acceptance (the “Offer”). The Offeror is owned by Mr. Ding Liguo (“DLG”), who is the Executive Chairman and Chief Executive Officer of the Offeree. DLG and his concert parties held in aggregate 75.56%<sup>1</sup> in the Offeree at the time of the Offer announcement. Shook Lin & Bok LLP (“SLB”) and PPCF acted for the Offeror as legal adviser and financial adviser, respectively.

*Earlier share purchase*

2 On 1 June 2018, Best Decade Holdings Ltd (“Best Decade”), a concert party of the Offeror, had entered into a share purchase agreement (the “SPA”) with EVRAZ Group S.A. (“EVRAZ”) and Vollin Holdings Ltd (“Vollin”). Under the SPA, Best Decade purchased: (i) from EVRAZ, a 15.04% stake in the Offeree at the US\$ equivalent of S\$7.42 per share; and (ii) from Vollin, a 2.30% stake in the Offeree at the US\$ equivalent of S\$4.86 per share (together, the “Cash Purchases”). The Cash Purchases were completed on 13 June 2018.

**Breach of Rule 17.1**

3 Under Rule 17.1 of the Singapore Code on Take-overs and Mergers (the “Code”), a cash offer is required where the offeror and any person acting in concert with it has bought for cash, during the offer period and within 6 months

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<sup>1</sup> At the time of the Offer, DLG and his spouse, Ms. Zhao Jing (“ZJ”), were deemed interested in 75.56% of the Offeree’s shares that were held by Best Decade Holdings Ltd (“Best Decade”). Best Decade was wholly-owned by Golden Top Group Limited, which in turn was wholly-owned by Honest Joy International Ltd. DLG and ZJ owned 70% and 30% of the issued shares of Honest Joy International Ltd, respectively.

prior to its commencement, shares of any class under offer in the offeree company carrying 10% or more of the voting rights of that class. The offer for each class of shares must be in cash or accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for shares of the class during the offer period and within 6 months prior to its commencement.

4 The Offeror had purchased a 15.04% stake in the Offeree at S\$7.42 within 6 months prior to the commencement of the Offer. In accordance with Rule 17.1 of the Code, the Offeror would have had to make the Offer at S\$7.42 per share instead of S\$7.00.

#### **Withdrawal of the Offer**

5 Following the announcement of the Offer on 27 September 2018, SLB informed the SIC on 1 October 2018 that the Offeror had failed to comply with Rule 17.1 of the Code. Trading in the shares of the Offeree was halted on 2 October 2018 and suspended subsequently.

6 The Offeror was given the opportunity to increase its Offer to S\$7.42 per share to comply with Rule 17.1 of the Code. As the Offeror was not able to secure the necessary financing to do so, it obtained the SIC's approval to withdraw its Offer of S\$7.00. The SIC had consented to the withdrawal of the Offer only after it was clear that the Offeror was unable to secure the necessary financing to increase its Offer.

7 On 11 October 2018, the SIC issued a public statement to state, amongst others, that it was investigating all relevant circumstances leading to the withdrawal of the Offer and, in particular, whether there had been any breach of Rule 17 of the Code.

8 The withdrawal of the Offer was announced on the same day and the trading suspension in the shares of the Offeree was lifted the next day on 12 October 2018.

### **Hearing**

9 In accordance with the Code, the SIC convened a hearing to inquire into whether the Offeror had breached Rule 17.1 of the Code, and following from that, whether the advisers had failed in their responsibility to ensure that the Offeror complied with the Code. The Council appointed a hearing committee comprising the following members:

- (a) Prof. Hans Tjio (Chairman of the hearing committee);
- (b) Mr. Rahul Goswamy;
- (c) Mr. Lee Boon Ngiap;
- (d) Ms. Jeanette Wong; and
- (e) Mrs. Tracey Woon.

10 In this connection, summonses were issued to each of the parties to produce documents and give evidence at the hearing. Prior to the hearing, all parties also made written submissions to the hearing committee.

## Findings and decisions

11 After considering all the information and evidence made available to it as well as oral and written representations made by the parties, the hearing committee's findings and decisions are as follows.

### The Offeror

12 The Offeror was found to have breached Rule 17.1 of the Code as it had made the Offer at S\$7.00 per share. This was below the highest price of S\$7.42 per share paid by the Offeror for more than 10% of the voting rights of the Offeree within 6 months prior to the commencement of the Offer.

13 The obligation to comply with Rule 17.1 of the Code rested primarily on the Offeror. In this instance, the hearing committee noted that the Offeror had relied on the advice of its advisers to ensure that the conduct of the Offer complied with the Code. Such reliance was reasonable in the circumstances. In addition, the hearing committee noted that none of the Offeror or its concert parties knowingly sought to breach Rule 17.1 of the Code. Nonetheless, the Offeror's failure to comply resulted in the Offer being withdrawn.

### *No compensation*

14 It is set out in the Introduction to the Code that where a person has breached the Code, the Council may make a ruling requiring the person concerned to pay, within such period as is specified, to the holders, or former holders, of securities of the offeree company such amount as it thinks just and reasonable so as to *ensure that such holders receive what they would have been entitled to receive if the relevant Rule had been complied with*. Such rules normally include, but are not limited to, Rule 17 of the Code.

15 The hearing committee decided not to make such a ruling for compensation on account of:

- (a) the circumstances leading up to the announcement of the Offer;  
and
- (b) the limited impact of the breach:
  - (i) the shareholders of the Offeree were not prejudiced as they were not in a position to accept the Offer. The breach was discovered shortly after the announcement of the Offer and the Offer was withdrawn before the Offer document was despatched; and
  - (ii) a halt in the trading of the Offeree shares was called within 3 business days of the Offer announcement and only lifted after the Offer was withdrawn.

16 The hearing committee emphasises that its decision in this case should not be regarded as establishing any precedent. Any future cases where the issue of compensation may arise will be considered solely in the light of the circumstances of the particular case.

17 In the circumstances, the hearing committee censures the Offeror for its breach of Rule 17.1 of the Code, and takes no further action.

#### The advisers to the Offeror

18 As professional advisers to the Offeror, SLB and PPCF had collective responsibility to ensure that the Offeror complied with the Code. This is made clear in the Introduction to the Code.

*SLB*

19 SLB was informed of the Cash Purchases. Nonetheless, SLB had advised the Offeror and PPCF at two initial meetings on 30 July 2018 and 3 August 2018 that the Offer, as it was voluntary, should be made at the highest price paid for shares in the Offeree by the Offeror and its concert parties in the 3 months prior to its announcement, in accordance with Rule 15.2 of the Code. Preparations for the Offer then proceeded on this basis. SLB only realised that Rule 17.1 of the Code was relevant when a third party contacted SLB to ask why the Offer did not comply with Rule 17.1 of the Code following the announcement of the Offer.

20 The role of the legal adviser is to advise the offeror on any legal, compliance and regulatory issues relating to the offer, in particular, the Code. It is therefore fundamental that the legal adviser be conversant with the requirements of the Code. In addition, the legal adviser should perform the necessary due diligence and checks before providing any advice in connection with the Code.

21 SLB's failure to recognise that the Cash Purchases triggered the longer 6-month price reference period under Rule 17.1 of the Code, whilst not deliberate, is a serious lapse. It caused the Offeror to announce the Offer in breach of Rule 17.1 of the Code, and, ultimately, resulted in the withdrawal of the Offer. On this basis, SLB had failed in its responsibility as legal adviser to the Offeror to ensure that the Offeror complied with Rule 17.1 of the Code. The hearing committee was therefore of the view that SLB has fallen short of the standards expected of a legal adviser under the Code and found that SLB had breached the Code.

22 Mr. David Chong Keen Loon (“Mr. Chong”), the SLB partner advising the Offeror on the Offer, has volunteered (without any admission of legal liability) to abstain from undertaking Code-related work for a period of 15 months from 23 April 2019. In the circumstances, the hearing committee accepts Mr. Chong’s offer of self-imposed abstention and censures SLB.

*PPCF*

23 There was an understanding between SLB and PPCF that SLB would take the lead in advising the Offeror on the requirements of the Code, including the determination of the Offer price, while PPCF would focus on ensuring that the Offeror would be able to fulfil the conditions precedent for the financing for the Offer. It was on the basis of this understanding that SLB had advised that the relevant price reference period was 3 months prior to the announcement of the Offer. Nevertheless, notwithstanding the working arrangements between the advisers, PPCF accepted that it shared responsibility for ensuring that the Offeror complied with the Code.

24 The hearing committee acknowledged that PPCF was entitled to receive advice from SLB on the Offer price. Nevertheless, it was also of the view that, as financial adviser to the Offeror, PPCF should have exercised due care and independent judgment in relying on the advice it received. Whilst PPCF had sought clarification at the meetings as to whether the price reference period should be 6 months, it accepted SLB’s explanation that the relevant price reference period was 3 months because the Offer was voluntary. PPCF, being aware of the Cash Purchases, failed to raise with SLB the possibility of Rule 17.1 of the Code applying on account of the Cash Purchases.

25 As with the legal adviser, it is important that the financial adviser is conversant with the requirements of the Code. PPCF's failure to recognise and raise the relevance of Rule 17.1 of the Code, having been aware of the Cash Purchases, contributed to the Offeror's breach of Rule 17.1 of the Code. For this reason, the hearing committee was of the view that PPCF had fallen short of the standards expected of a financial adviser under the Code. Accordingly, PPCF was found to have breached the Code.

26 The hearing committee was of the view that PPCF was relatively less culpable than SLB in the Offeror's breach of Rule 17.1 of the Code. Mr. Mark Liew Wai Weng ("Mr. Liew") and Mr. Yong Chin Vei ("Mr. Yong"), who were the key professionals from PPCF directly advising the Offeror, have volunteered (without any admission of legal liability) to abstain from undertaking Code-related work for a period of 9 months from 23 April 2019. In the circumstances, the hearing committee accepts Mr. Liew and Mr. Yong's offer of self-imposed abstention and censures PPCF.

#### Waiver of Rule 33.1(a) of the Code

27 Separately, the Offeror had during the hearing sought an exemption from the prohibition under Rule 33.1(a)<sup>2</sup> of the Code to make a subsequent offer within 12 months of a withdrawn offer. Having dealt with the breach of Rule 17.1 of the Code by the Offeror and its advisers, the SIC granted the exemption sought. In this connection, the Council notes that the Offeror has announced an offer for the Offeree today.

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<sup>2</sup> Except with Council's consent, where any offer other than a partial offer (see Rule 16.7) has been announced or posted but has not become or been declared unconditional in all respects and has been withdrawn or has lapsed, neither the offeror, any persons who acted in concert with it in the course of the original offer nor any person who is subsequently acting in concert with any of them may within 12 months from the date on which such offer is withdrawn or lapses:-

- (i) announce an offer or possible offer for the offeree company, or
- (ii) acquire any voting rights of the offeree company if the offeror or persons acting in concert with it would thereby become obliged under Rule 14 to make an offer.



## **Conclusion**

28 This case demonstrates the critical role that advisers play in ensuring that their clients comply with the Code. In advising their clients, advisers have to be vigilant and exercise due care at all times. Advisers must be conversant not only with the requirements of the Code, but also how these requirements are applied in practice. This is fundamental and cannot be over-emphasised. The SIC also expects advisers to have proper processes and controls in place to ensure that all the provisions of the Code relevant to any particular circumstance are taken into account by their professionals.

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