

SECURITIES INDUSTRY COUNCIL
(“SIC” OR THE “COUNCIL”)
PUBLIC STATEMENT ON ALLIED TECHNOLOGIES LIMITED

Background

On 17 June 2022, SRS Auto Holdings Pte. Ltd. (the “Offeror”) announced a voluntary cash offer (the “Offer”) at S\$0.0088 per share for Allied Technologies Limited (the “Offeree”)¹ conditional upon 90% acceptance. The Offeror was wholly-owned by its sole director, Mr Tan Yew Kiat (“Mr Tan”). Mr Ryan Lin Longcai (“Mr Lin”) of Bayfront Law LLC (“Bayfront”) acted for the Offeror as legal adviser. No financial adviser was appointed in relation to the Offer.

2 The Offer price was increased to S\$0.011 per share on 3 August 2022. The Offer turned unconditional in all respects on 6 September 2022 giving the Offeror the right under section 215(1) of the Companies Act to compulsorily acquire the shares of any dissenting shareholder. The Offeree was delisted on 1 November 2022 after the Offeror exercised its right of compulsory acquisition.

Rollover Arrangements

3 In the Offer document dated 8 July 2022, it was disclosed that:

- (a) The Offeror had obtained irrevocable undertakings (the “Irrevocable Undertakings”) from 30 shareholders of the Offeree (the “Undertaking Shareholders”) who collectively held 44.2% of the shares of the Offeree, to accept the Offer. Under the terms of the Irrevocable Undertakings, the Undertaking Shareholders also waived their rights to receive cash payment for their shares tendered to the Offer.

¹ The Offeree is now known as AT Holdco Pte. Ltd..

- (b) In the event that the Offer was successful, each of the Undertaking Shareholders would subscribe² (the “Subscription Agreement”) for ordinary shares in a subsidiary of the Offeror (the “Offeror Subsidiary”) to which all the shares of the Offeree would be transferred by the Offeror. (The Irrevocable Undertakings and Subscription Agreements shall be referred to collectively as the “Rollover Arrangements”).)

Role of Mr Low Si Ren, Kenneth (“Mr Low”) in the Offer

4 Mr Low was an Executive Director of the Offeree at the time of the Offer. He was disclosed to be a concert party of the Offeror in the Offer documents as he had worked with Mr Tan to carry out the take-over of the Offeree. Over the course of SIC’s inquiry into possible breaches of the Singapore Code on Take-overs and Mergers (the “Code”), it became clear that Mr Low was more than a concert party, and was in fact the originator of the Offer. He had approached Mr Tan to fund the privatisation of the Offeree and had proposed to Mr Tan that the Offeror put in place the Rollover Arrangements with the Undertaking Shareholders. In addition, to enable Mr Low to deal with the day-to-day execution of the Offer, Mr Tan had authorised Bayfront to take instructions from Mr Low on the Offeror’s behalf.

Breaches of Rules 10 and 8.2

Rule 10 – No special deals

5 Rule 10 of the Code provides that, *except with the Council’s consent*, the offeror or persons acting in concert with it may not make any arrangements with selected shareholders and may not deal or enter into arrangements to deal or make purchases or sales of shares of the offeree company, or enter into arrangements concerning acceptance of an offer, either during an offer or when

² The Subscription Agreements had not been signed by the Undertaking Shareholders at the time of the Offer.

one is reasonably in contemplation, if there are *favourable conditions attached which are not being extended to all shareholders*.

6 As the Rollover Arrangements were offered to only the Undertaking Shareholders and not made available to other shareholders, the Rollover Arrangements constituted a special deal prohibited under Rule 10 of the Code. In accordance with Rule 10 of the Code, the Council's consent for the Rollover Arrangements should have been sought. However, neither the Offeror nor its legal adviser, Bayfront, sought the Council's consent for the Rollover Arrangements beforehand.

Rule 8.2 – Standard of care

7 Rule 8.2 of the Code states that any document or advertisement addressed to shareholders in connection with an offer or any announcement issued in connection with an offer must, as is the case with a prospectus, satisfy the highest standard of accuracy and present the information contained therein adequately and fairly.

8 The information on the Rollover Arrangements would have been relevant to shareholders. However, such information was not presented adequately or fairly in accordance with Rule 8.2 of the Code. The Rollover Arrangements were disclosed separately in different parts of the Offer documents. The Irrevocable Undertakings were set out in one section³ as an undertaking to accept the Offer for no consideration. The Subscription Agreements were set out in another section⁴ pertaining to compulsory acquisition as an agreement to subscribe for shares in the Offeror Subsidiary, without further details on it. The terms on which the Undertaking Shareholders would receive shares in the Offeror Subsidiary and their expected shareholding therein were not disclosed. As a result, the identities of the ultimate controlling shareholders of the Offeror Subsidiary

³ Page 10 of the Offer document.

⁴ Page 16 of the Offer document.

(which was intended to own the Offeree post-Offer) and the consideration to be received by the Undertaking Shareholders were not known to shareholders.

Post-Offer Rectification of the Breaches

9 The SIC Secretariat contacted Bayfront on the possible breaches of the Code in September 2022. In October 2022, Bayfront represented to the SIC Secretariat that the Offeror would rectify the breach of Rule 10 of the Code (the "Rule 10 Rectification") by making payment in cash of S\$0.011 per share to all the Undertaking Shareholders instead of proceeding with the Rollover Arrangements.

10 However, no progress on the Rule 10 Rectification was made. To inquire into this, the SIC Secretariat commenced interviews of Mr Tan, Mr Low and Mr Lin in May 2023. During the interviews, it came to light that Mr Tan was not aware of the discussions between the SIC Secretariat and Bayfront on the Rule 10 Rectification. Instead, Bayfront was communicating only with Mr Low, who had taken it upon himself to carry out the Rule 10 Rectification.

11 Following the interviews, the SIC Secretariat imposed a deadline for the Offeror to provide by 7 June 2023 (later extended to 30 June 2023 at the Offeror's request) written confirmations from each Undertaking Shareholder (the "Confirmations") to the effect that he/she had been paid the cash-only consideration and had not received and would not receive any other consideration, other than the cash-only consideration.

12 By the deadline of 30 June 2023, the SIC Secretariat had received only six Confirmations. As the Rule 10 Rectification remained outstanding for more than 10 months since September 2022, the Council decided to convene a hearing to inquire into the matter.

13 As at 3 October 2023, the day prior to the hearing, the Offeror submitted a total of 28 Confirmations to the Council. The two outstanding Confirmations related to two Undertaking Shareholders who had passed away in 2023.

Hearing

14 In accordance with the Code, the SIC convened a hearing on 4 October 2023 to inquire into whether the Offeror had breached Rules 10 and 8.2 of the Code, and whether the adviser had failed in its responsibility to ensure that the Offeror complied with the Code. The Council appointed a hearing committee comprising the following members:

- (a) Mr Koh Boon Hwee (Chairman of the hearing committee);
- (b) Mr Karam Butalia;
- (c) Mr Rahul Goswamy;
- (d) Mr Kee Rui Xiong;
- (e) Mr Bob Tan; and
- (f) Prof Hans Tjio.

15 In this connection, summonses were issued to each of the Offeror, Mr Tan, Mr Low, Bayfront and Mr Lin to appear at the hearing. Summonses were also issued to each of the Offeror and Bayfront to produce documents. Prior to the hearing, Bayfront also made written submissions to the hearing committee. Neither the Offeror, Mr Tan nor Mr Low made any written submissions.

16 Mr Tan did not appear at the hearing or provide reasons for his absence.

Findings

17 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 set out below.

Mr Low – a joint offeror

18 The hearing committee found Mr Low to be more than a concert party or an agent of Mr Tan or the Offeror:

(a) Mr Low initiated and organised the Offer.

It was Mr Low that approached Mr Tan to fund the Offer. Mr Low also personally canvassed the support of the Undertaking Shareholders in respect of the Rollover Arrangements to reduce the cash needed to be put up by the Offeror. Mr Tan did not know any of the Undertaking Shareholders.

(b) Mr Low exercised significant influence over the conduct of the bid.

Save for the decision to increase the Offer price, which Mr Tan was providing the funds for, Mr Low had sole discretion with respect to the conduct of the Offer. Mr Low himself stated at the hearing that he did not involve Mr Tan in the conduct of the Offer as Mr Tan did not have any experience in corporate finance.

(c) Mr Low assumed responsibility for the Rule 10 Rectification.

Mr Low assumed responsibility to pay the Undertaking Shareholders when directed to make the Rule 10 Rectification. He had confirmed to the SIC that all but two of them have been paid. These payments when made in full would account for \$8.6 million or 44.2% of the total value of the Offer.

19 In the circumstances, the hearing committee was of the view that Mr Low together with Mr Tan and the Offeror were joint offerors for the purposes of the Code.

Breach of Rule 10

The Offeror

20 The Offeror was found to have breached Rule 10 of the Code as it had offered the Rollover Arrangements to only the Undertaking Shareholders.

21 In this instance, the hearing committee noted that none of the Offeror, Mr Tan or Mr Low had knowingly sought to breach Rule 10 of the Code. The Offeror had relied on the advice of Bayfront that the Rollover Arrangements complied with the Code. Nonetheless, the Offeror's failure to comply with Rule 10 of the Code resulted in unequal treatment of shareholders.

The adviser to the Offeror

22 As adviser to the Offeror, Bayfront had a responsibility to ensure that the Offeror complied with the Code. This was made clear in the Introduction to the Code.

23 Bayfront had, at the time of the Offer, taken the position that the Rollover Arrangements were not special deals under Rule 10 of the Code. Therefore, it did not seek the Council's consent for the Rollover Arrangements beforehand. At the hearing, Bayfront accepted that this was a mistaken view and that it should have sought the Council's consent before the Offeror proceeded with the Rollover Arrangements. If it had done so, the breach would have been avoided as the Council would not have permitted the Rollover Arrangements.

24 Whilst unintended, Bayfront's wrong advice had directly caused the Offeror to breach Rule 10 of the Code. Accordingly, Bayfront was found to have fallen short of the standard expected of professional advisers under the Code.

Breach of Rule 8.2

The Offeror

25 As the information on the Rollover Arrangements was not disclosed adequately or fairly, it fell short of the standard of care required under Rule 8.2 of the Code. Accordingly, the Offeror was found to have breached Rule 8.2 of the Code.

The adviser to the Offeror

26 The onus of ensuring that disclosures by the Offeror met the standard of care required under Rule 8.2 of the Code fell on Bayfront as the adviser to the Offeror. In this connection, the hearing committee noted that Bayfront's scope of work as set out in its letter of engagement included preparing and drafting of documents to be issued by the Offeror in connection with the Offer in compliance with the Code.

27 Bayfront has accepted that the disclosures in the Offer documents did not present the Rollover Arrangements fairly and adequately. Bayfront has failed in its responsibility to ensure that the Offeror complied with Rule 8.2 of the Code. Accordingly, Bayfront has fallen short of the standards expected of professional advisers under the Code and was found to have breached the Code.

Sanctions

The Offeror

Conduct of Mr Tan and Mr Low

Tardiness in implementing the Rule 10 Rectification

28 Mr Low had decided that he would take responsibility for the Rule 10 Rectification. In October 2022, Bayfront had represented to the SIC Secretariat that the Offeror would rectify the breach of Rule 10 of the Code. However, no progress was made from October 2022 to May 2023. As of 11 July 2023, only 14 Confirmations were submitted to the Council. After the parties were informed on 12 July 2023 that a hearing would be convened, six Confirmations were

submitted by 17 August 2023 and another eight Confirmations were submitted on 2 October 2023, two days before the hearing. In the end, it took over 11 months for the Rule 10 Rectification (excluding the rectification payments to the two deceased Undertaking Shareholders) to be completed.

29 Mr Tan was not aware of the Rule 10 Rectification until he was informed by the SIC Secretariat at an interview on 4 May 2023. As the sole director of the Offeror, Mr Tan had an obligation to ensure that the Rule 10 Rectification was completed expeditiously. Nevertheless, Mr Tan continued to play no part in the Rule 10 Rectification, leaving it to entirely to Mr Low.

Disregard of summons to appear

30 Mr Tan's failure to appear before the hearing committee without providing any reason⁵ was a flagrant disregard of a summons issued by the SIC under section 139(11) of the Securities and Futures Act 2001 (the "SFA").

31 At the hearing, Mr Low stated that he had advised Mr Tan not to attend the hearing as Mr Tan was not familiar with the details of the Offer.

32 However, Mr Tan's familiarity with details of the Offer was not a relevant consideration. As the sole director of the Offeror, Mr Tan has responsibility for the Offer. Mr Tan would be an obvious person of interest in the case where the Offer could be in breach of the Code. As set out in section 139(11) of the SFA, it is the discretion of the Council who to summon to give evidence at a hearing. Mr Low's advice for Mr Tan to disregard the summons was wholly inappropriate.

⁵ Mr Tan was not contactable by the SIC Secretariat after he was issued the summons in relation to the hearing.

33 The hearing committee considers the attitude of Mr Tan and Mr Low in relation to their obligations under the Code and their conduct generally in this whole episode to be deplorable. In the circumstances and taking into account the findings of breaches of the Code, the hearing committee:

- (a) censures the Offeror, Mr Tan and Mr Low for the breaches of Rules 10 and 8.2 of the Code;
- (b) denies each of Mr Tan and Mr Low the facilities to buy and sell shares through the Singapore Exchange Securities Trading Limited without the Council's consent for a period of 18 months from 24 January 2024; and
- (c) declares each of Mr Tan and Mr Low to be unsuited to be directors of any company listed in Singapore for a period of 3 years from 24 January 2024.

Outstanding Confirmations

34 To ensure that the Rule 10 Rectification was completed as soon as practicable, the hearing committee had required each of Mr Tan and Mr Low to provide written undertakings that they would make payment within 30 calendar days of the issue of the Grant of Probate or Letters of Administration (as the case may be) by the Court to the respective estates of the deceased Undertaking Shareholders. These written undertakings were submitted to the Council on 31 October 2023.

The adviser to the Offeror

35 Mr Lin, the Bayfront director in charge of advising the Offer, had volunteered to abstain from undertaking Code-related work for a period of 2 years from 17 October 2022. The hearing committee accepts Mr Lin's offer of self-imposed abstention of 2 years and censures Bayfront.

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