

香港聯合交易所有限公司

(香港交易及結算所有限公司全資附屬公司)

THE STOCK EXCHANGE OF HONG KONG LIMITED

(A wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited)

Compliance with the disclosure and shareholder approval requirements is crucial to the integrity and confidence in both the governance of individual listed issuers as well as the wider securities market in Hong Kong.

The ability to comply with these requirements calls for the creation and maintenance of robust internal controls. The conduct which gives rise to sanction in this case took place over a number of years but was not detected notwithstanding the Audit Committee having purported to have conducted annual reviews and made statements confirming the quality of the controls in place to ensure compliance with the GEM Listing Rules. It is clear that the statements did not reflect reality as to the strength of the controls and reviews which allegedly took place.

The GEM Listing Rules create the specific role of Compliance Officer as an additional responsibility for a named Executive Director. The GEM Listing Rules place specific compliance related responsibilities on them which must be taken seriously. Although the obligation is relevant to all directors, it is particularly incumbent on those accepting this role that they equip themselves with the necessary knowledge and take professional advice where appropriate to ensure that they comply with their personal responsibilities.

The GEM Listing Committee of the Exchange (“Committee”)

CENSURES:

- (1) **G.A. Holdings Limited** (“Company”) (Stock Code: 8126) for failing to comply with the announcement, circular and/or shareholders’ approval requirements with respect to the Subject Transactions (defined below), in breach of Rules 19.34, 19.40, 20.32, 20.33, 20.34, 20.37, 20.44, 20.47, 20.50, 20.51, 20.53, 20.54, 20.55 of the Rules Governing the Listing of Securities on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited (“GLR”/“Rules”) (and the equivalent GLR that were in force before 1 July 2014);

AND:

- (2) **Mr Loh Nee Peng** (“Mr N Loh”), a former executive director (“ED”) of the Company who resigned on 20 August 2015;
- (3) **Mr Loh Boon Cha** (“Mr B Loh”), a former ED of the Company who resigned on 4 July 2016;

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- (4) **Mr Wong Jacob** (“Mr Wong”), a former independent non-executive director (“INED”) of the Company who resigned on 20 August 2015;
- (5) **Ms Song Qi Hong** (“Ms Song”), a former INED of the Company who resigned on 26 July 2016

for failing to:

- (a) apply such degree of skill, care and diligence required and expected of them in taking reasonable steps to procure the Company to comply with the procedural requirements with respect to the Subject Transactions as well as to establish and maintain an effective and appropriate internal control procedure, in breach of GLR5.01(6);
- (b) comply with the Declaration and Undertaking with regard to Directors given by each of them to the Exchange in the form set out in Appendix 6A to the GLR (“Undertaking”) to use their best endeavours to procure the Company’s GLR compliance and comply with the GLR to the best of their abilities; and
- (c) cooperate in the investigation of the Listing Department in breach of their obligations under their respective Undertaking (“Undertaking to Co-operate”);

IN ADDITION:

- (6) **Mr N Loh**, as the Company’s Compliance Officer from 14 July 2004 to 16 May 2012, for failing to advise and assist the board of directors of the Company (“Board”) in implementing procedures to ensure the Company complied with the GLR, in breach of his responsibilities as the Company’s compliance officer under GLR5.20 that was in force before 1 July 2014.

(Mr N Loh, Mr B Loh, Mr Wong and Ms Song are collectively referred to as “Directors”)

On 7 February 2018, the Committee conducted a hearing into the conduct of the Company under the GLR and the Directors in relation to their obligations under the GLR and their respective Undertaking.

FACTS

From 19 October 2008 to 26 April 2015, Mr Zhao Guiming (“Mr Zhao”) was (a) a director of three of the Company’s subsidiaries; and (b) the ultimate beneficial owner of Beijing Zhong Bao Excellent International Trading Co Ltd (“Zhong Bao”) directly or indirectly via trust agreements with Mr N Loh and an independent third party.

Between 2006 and 2016, the Company and its subsidiaries (“Group”) entered into 55 transactions with Zhong Bao or its subsidiaries (collectively, “Zhong Bao Group”) with a total value of RMB1.276 billion (“Subject Transactions”).

Given Mr Zhao's beneficial ownership of Zhong Bao, the Zhong Bao Group became a connected person of the Company at a subsidiary level, Zhong Bao Group being an associate of Mr Zhao ("Connected Person").

Since Zhong Bao Group was a (a) Connected Person and (b) counter-party to the Subject Transactions, the Subject Transactions became connected transactions ("CT") or continuing connected transactions ("CCT") under the Rules as of 19 October 2008.

In addition, some of the Subject Transactions constituted major/discloseable transactions ("Notifiable Transactions") under the Rules. However, the Company did not, at the time, comply with the procedural requirements set out in the Rules with respect to the CT, CCT or Notifiable Transactions. The Company has since disclosed the CT, CCT and Notifiable Transactions.

The Company submitted it was not aware of Mr Zhao's relationship with Zhong Bao until 2 March 2016 when its PRC lawyers discovered the same, via public records, whilst it was conducting a due diligence of an unrelated transaction involving Zhong Bao Group.

On 11 March and 30 June 2016, the Company informed the Department of the Connected Persons, CT, CCT and Notifiable Transactions as well as its failure to comply with the procedural requirements under the Rules.

A series of announcements were issued between 14 and 21 March 2016 and 27 September 2016, in which the Company disclosed (a) the Connected Person, CT, CCT and Notifiable Transactions; and (b) its failure to comply with the procedural requirements under the Rules with respect to the same.

The Company responded to the Department's enquiries. Although Mr B Loh and Ms Song had previously (whilst they were a director of the Company) signed a confirmation statement verifying the contents of some of the Company's submissions with respect to the Department's investigation, Mr B Loh, Ms Song and additionally, Mr N Loh and Mr Wong failed to respond to Department's enquiries addressed to each of them directly.

COMMITTEE'S FINDINGS OF BREACH

The Committee considered the written and oral submissions of the Listing Department, the Company and the Directors and concluded:

- (1) **The Company breached GLR19.34, 19.40 and Chapter 20 of the GLR for the reasons that** the Company admitted breaching the relevant requirements of the GLR with respect to the Notifiable Transactions, CT and CCT under the Subject Transactions. Accordingly, the Company failed to comply with the procedural requirements, at the relevant time, as required under GLR19.34, 19.40, 20.32, 20.33, 20.34, 20.37, 20.44, 20.47, 20.50, 20.51, 20.53, 20.54, 20.55 (and the equivalent GLR that were in force before 1 July 2014).
- (2) **The Company did not have, at the material time, adequate internal controls for the reasons that** during the period, between 2008 and 2013, the Company was unable to evidence that it had in place, at the relevant time, any written internal controls procedures or practices with respect to *inter alia* notifiable, connected and/or continuing connected transactions, or regular updating of the Company's list of connected persons, or regularly checking on whether any of its transactions had become continuing connected transactions.

- (3) **The Directors breached GLR5.01(6) and their respective Undertaking for the reasons that:**
- (a) Mr N Loh and Mr B Loh (collectively, “Relevant EDs”) either knew or ought to have known that the Notifiable Transactions, CT and CCTs were subject to the procedural requirements under the Rules.
 - (b) The Relevant EDs knew or ought to have known that the Notifiable Transactions were significant transactions which required shareholders’ approval and/or disclosure, particularly when at least one director of each of the Company’s subsidiaries was a director of the Company at the relevant time. The Company’s annual report for the period ending 31 December 2014 stated *inter alia* that “*the Board takes responsibility for decisions making in all major matters of the Company. The day-to-day management, administration and operation of the Company are delegated to the senior executives. Approval has to be obtained from the Board prior to any significant transactions entered into by these senior executives ...*” Therefore, the Board should have knowledge and details of the transactions entered into by the Company.
 - (c) The Directors (including the Relevant EDs) were responsible for ensuring the Company established and maintained appropriate internal controls systems. In addition, the Audit Committee’s terms of reference specify that the INEDs (ie Mr Wong and Ms Song) were responsible for overseeing the Company’s internal controls systems and discussing the same with management to ensure that management provided adequate training to the Company’s staff. Accordingly, the Directors failed to ensure the Company had established and maintained effective internal control procedures between 2008 and 2013, particularly as, (i) there was no evidence that the Company had in place any internal controls procedures or internal control practices with respect to notifiable transactions, connected and/or continuing connected transactions; and (ii) the Directors did not ensure the Company’s list of connected persons was updated regularly.
 - (d) The Directors failed to ensure the Company’s staff had received adequate and appropriate training with respect to the GLR. From 2006 to March 2016, only two training sessions on connected transactions were conducted, which was insufficient. Regular training should be provided to the Company’s staff and the directors with respect to the GLR that was relevant to their duties/responsibilities within the Group.
 - (e) The Directors failed to comply with their respective Undertaking to use their best endeavours to procure the Company’s GLR compliance and comply with the GLR to the best of their abilities.
- (4) **Mr N Loh breached Rule 5.20 for the reason that** as the Company’s Compliance Officer during the relevant period he failed to advise and assist the Board to implement procedures to ensure the Company complied with the GLR, particularly when, the Company did not during the period between (a) 2008 and 2013 establish or maintain an effective internal control procedure. The Company was unable to show that it had, at the time, any written internal control procedures or practices with respect to *inter alia* notifiable, connected and/or continuing connected transactions; and (b) 2008 and 2016 regularly update the Company’s list of connected person as well as check its list of transactions to ascertain if any had become continuing connected transactions.

- (5) **The Directors breached their respective Undertaking to Co-operate for the reasons that:**
- (a) In the course of the Department's investigation, the Exchange sent an enquiry letter to each of the Directors at their respective last known addresses. The Directors did not respond to the Exchange's enquiry letter despite two reminders having been issued to each of them. The Committee found each of the Directors to have failed to respond to the Exchange's enquiry without reasonable or valid reason and have therefore breached their Undertaking to Co-operate.
 - (b) In the course of the Department's investigation, the Exchange telephoned Ms Song who confirmed that she did not receive the Department's enquiry letter for her last known address changed. However, Ms Song refused to provide the Department with her updated address and asked the Department not to send any enquiry letter to her for she had resigned as a director of the Company. The Committee found Ms Song's conduct to be in direct breach of her Undertaking to Co-operate which requires *inter alia* that Ms Song (a) shall notify the Exchange, during the 3-year period after the date on which she ceased to be a director of the Company (ie expiring on 26 July 2019), of any change of address within 28 days of such change; and (b) acknowledges the deemed service provisions.
 - (c) Each of the Directors' breach of their respective Undertaking would be taken into account in the Exchange's consideration of their suitability should they be appointed as a director of listed issuers in Hong Kong in the future under GLR5.02, which requires that each director of a listed issuer must satisfy the Exchange that he/she has the character, experience and integrity and is able to demonstrate a standard of competence commensurate with his/her position as a director of a listed issuer.

The Committee determined that the above breaches of the Company and the Directors were serious.

REGULATORY CONCERNS

The Committee regards the breaches in this matter serious:

- (1) The GLR is designed to ensure that shareholders and investors have continued confidence in the market and they are kept fully informed by the Company, as well as to maintain a fair and orderly market. The relevant Rules concerning notifiable transactions and connected transactions are GLR19.34, 19.40, 20.32, 20.33, 20.34, 20.37, 20.44, 20.47, 20.50, 20.51, 20.53, 20.54, 20.55 (and the equivalent GLR that were in force before 1 July 2014) are structured to achieve this purpose. In this case the Company failed at the relevant time to obtain shareholders' approval for the Notifiable Transactions, CT and CCT under the GLR. As a consequence, the shareholders were not kept informed by the Company or given the opportunity to vote on the Notifiable Transactions, CT and CCT.
- (2) The Subject Transactions spanned over 7.5 years (ie 2008-2016) and involved 55 transactions totaling to a value of approximately RMB1.276 billion.

- (3) By its own admission, the Company's non-compliance of the Rules was attributed by its failure to (a) engage an independent professional adviser to advise regularly on compliance with the GLR; (b) provide regular and in-depth training to directors on compliance with the GLR; and (c) be vigilant with respect to the changes in the GLR and the potential implications on the business and transactions undertaken by the Group. The Committee considered the Company displayed serious corporate governance deficiencies. The purpose of maintaining effective and adequate internal controls and risk management systems is to increase the Company's accountability to its shareholders. The failure of the Board to oversee and review, on an ongoing basis, the effectiveness of its internal controls procedures exposes the Company to risks of non-compliance with the Rules.
- (4) The board of directors appeared to have been complacent in believing the Subject Transactions were not subject to procedural requirements since Zhong Bao Group had been carrying on business with the Group from 2003 and the Board (at the time) was not alerted by the relevant connected person that the Subject Transactions were CT/CCT. Entities are constantly developing over time which often results in changes to the composition of its board of directors and controlling shareholders. Therefore, it is important that the directors implement adequate internal controls procedures to verify whether each transaction (in this case, Zhong Bao Group) is a connected transaction. It is inadequate for the Board to rely on the director's or connected persons' self-disclosure as sufficient procedure in identifying connected transactions.
- (5) The Company did not provide evidence that it checked/updated its list of connected person before 2016 or regularly checked its list of transactions to ascertain if any had become continuing connected transactions. The Company's failure to check or update its list of connected persons prolonged the Company's breach of the Rules.
- (6) The Directors failed to cooperate with the Department's investigation, which affected the Department's (a) discharge of its regulatory duties; (b) assessment of the regulatory issues; and (c) decision on the appropriate level of regulatory response. However, the Directors did respond to the Department's disciplinary report by being a party to the Company's submission. No submissions were provided by the Directors as to their involvement in this matter or why they did not co-operate with the investigation. Selective responses do not demonstrate compliance with the Undertaking to Co-operate. Furthermore, Ms Song's refusal to provide an update correspondence address is in flagrant disregard of her obligations set out in her Undertaking to Co-operate.

SANCTIONS

Having made the findings of breach stated above, and having concluded the breaches are serious, the Committee is highly critical of and decides to:

CENSURE:

- (1) The Company for breaches of GLR19.34, 19.40, 20.32, 20.33, 20.34, 20.37, 20.44, 20.47, 20.50, 20.51, 20.53, 20.54, 20.55 (and the equivalent GLR that were in force before 1 July 2014);
- (2) Mr N Loh, Mr B Loh, Mr Wong and Ms Song for breach of GLR5.01(6) and their respective Undertaking and Undertaking to Co-operate; and
- (3) Mr N Loh for breach of GLR5.20;

AND STATE that Mr N Loh's, Mr B Loh's, Mr Wong's and Ms Song's conduct will be taken into account in accessing their suitability under GLR5.02 in the event that they wish to become a director of another issuer in the future.

The Committee **FURTHER DIRECTS:**

- (1) The Company to appoint an independent compliance adviser (as defined in Chapter 6A of the GLR) satisfactory to the Department on an ongoing basis for consultation with the GLR for two years within two months from the publication of this news release. The compliance adviser is to have general and specific responsibilities, and shall be accountable to the audit committee of the Company.
- (2) The Company to publish an announcement to confirm that the direction in paragraph (1) above has been fully complied with within two weeks after the fulfillment of the direction.
- (3) The Company to submit drafts of the announcement referred to in sub-paragraph (2) above for the Department's comment and may only publish the announcement after the Department has confirmed it has no further comment on them.

For the avoidance of doubt, the Exchange confirms that the above sanctions and directions apply only to the Company and the Directors and not to any other past or present members of the board of directors of the Company.

Hong Kong, 13 April 2018