

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)

The Exchange takes a very serious view of the conduct of Mr Ang Wing Fung (“Mr Ang”), a former Executive Director, in relation to certain payments by the Company to himself or third parties. The Exchange considers that Mr Ang may not be considered suitable to be a director of a listed company if he should make such an application in the future.

It is imperative that robust internal controls are established, maintained and effectively observed and enforced by management without exception. A failure to do so exposes the Company and its shareholders to risks stemming from possible misapplication of corporate assets.

Directors who are on the Remuneration Committee must exercise reasonable care, skill and diligence in their consideration and approval of the emoluments of directors and others which fall within the ambit of the Remuneration Committee. Failure to do so renders the delinquent directors liable to disciplinary sanctions.

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

CENSURES:

- (1) **Inno-Tech Holdings Limited (“Company”)** (Stock Code: 8202) for failing to comply with various rules in Chapter 18 of the Rules Governing the Listing of Securities on the Growth Enterprise Market of the Exchange (“GLR”) for the delayed publication of three sets of financial results and reports;

CENSURES the following executive directors (“EDs”) and independent non-executive directors (“INEDs”) of the Company:

- (2) **Mr Ang**, former ED;
- (3) **Mr Chen Chuan (“Mr Chen”)**, former ED;
- (4) **Mr Shih Yau Ting Jackson (“Mr Shih”)**, former ED;

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- (5) **Mr Lee Ho Yiu Thomas** (“**Mr Lee**”), former INED;
- (6) **Ms Lu Di** (“**Ms Lu**”), former INED; and
- (7) **Mrs Kwan Leung Anna** (“**Mrs Kwan**”), former INED

for failing to perform their directors duties as required in breach of GLR5.01 and their obligations under the Declaration and Undertaking given to the Exchange in the form set out in Appendix 6-A of the GLR to comply with the GLR to the best of their abilities (“**Undertakings**”). (The directors identified at (2) to (7) above are collectively referred to as the “**Relevant Directors**”).

The Committee further CENSURES Mr Chen for breaching his obligations under GLR5.20 as the Company’s Compliance Officer.

On 10 July 2018, the Committee conducted a hearing into the conduct of the Company and the Relevant Directors in relation to their obligations under the GLR and the Undertakings.

FACTS

The Company delayed the publication and despatch of three sets of financial results and reports (“**Late Accounts**”) as summarised below:

Financial results/ report	Reporting period and due date	Published	Delay (months)	GLR breached
1H2014/15 results/report	6 months ended 31/12/2014 (14/2/2015)	18/3/2015 23/3/2015	1 1	18.78, 18.53
FY2014/15 results/report	Year ended 30/6/2015 (30/9/2015)	28/1/2016 12/2/2016	4 4	18.49, 18.03, 18.48A, 18.50C
1Q2015/16 results/report	3 months ended 30/9/2015 (14/11/2015)	28/1/2016 12/2/2016	2 3	18.79, 18.66

Payments

At the Company's request, trading of the Company's shares was suspended on 26 January 2015 pending publication of inside information (regarding the Payments as defined below).

In late January 2015, the Company engaged a professional firm to conduct a forensic review of the Company's financial affairs from 2010 to 2014 including certain payments made by the Company to its directors. The forensic review report identified various payments in respect of which there were insufficient support to show that they were made in the ordinary course of business of the Company. These various payments, most of which were made in 2014, fell within three categories:

	<u>\$ million</u>
(i) "Suspicious payments relating to Mr Ang" including "overpaid" salary and bonus payments to Mr Ang	23.93 to 24.13
(ii) Expenses claimed by Mr Ang	5.00
(iii) Cash withdrawals by Mr Ang	<u>2.85</u>
Total	31.78 to 31.98

The forensic report also stated that:

- 1 "It is uncertain whether internal control procedures concerning cash transactions were properly adopted and implemented by the Company";
- 2 "Having considered the significant amount of cash withdrawals and the absence of supporting documents in respect of these transactions, we are of the view that Mr Ang should be suspected of dissipating the cash of the Company in the vicinity of \$32 million".

Between February and April 2015, the Company published announcements disclosing:

- (i) the forensic review findings;
- (ii) that on 9 April 2015, Mr Ang provided a written acknowledgement to the Company that he owed the Company \$33 million; and he resigned as a director of the Company on the same day; and
- (iii) that on 23 April 2015, Mr Ang repaid the Company \$33 million.

According to the Company, Mr Ang's \$33 million repayment to the Company covered the payments identified in the forensic review report as referred to above as well as an additional sum of approximately \$1 million cash withdrawal by Mr Ang (collectively "**Payments**").

Share trading resumed on 15 August 2016 after the Company had complied with all resumption conditions imposed by the Exchange.

LISTING DEPARTMENT'S ASSERTION OF BREACHES

Company's breach

The GLR requirements in relation to financial reporting are as follows:

- (1) GLR 18.03 – Distribution of annual reports not more than 3 months after financial year end;
- (2) GLR 18.48A – Publication of annual report no later than 3 months after financial year end;
- (3) GLR 18.49 – Publication of preliminary announcement of results for the financial year no later than 3 months after financial year end;
- (4) GLR 18.50C – Submission of annual report to the Exchange for publication on the GEM website no more than 3 months after financial year end;
- (5) GLR 18.66 – Publication of quarterly reports no later than 45 days after the period end;
- (6) GLR 18.79 – Publication of preliminary announcement of quarterly results no later than 45 days after the period end;
- (7) GLR 18.53 – Publication of half-year report no later than 45 days after the period end; and
- (8) GLR 18.78 – Publication of preliminary announcement of results for each of the first 6 month of each financial year no later than 45 days after the period end.

The Listing Department ("**Department**") asserted that, in relation to the Late Accounts, the Company breached the above GLR provisions as identified at (1) to (8) above.

Internal controls

The Department asserted that the Company did not have adequate internal controls in place to safeguard assets of the Company and ensure sufficient support for payments being made by the Company for the following reasons:

- (1) There was no formal internal control documentation during the period when Mr Ang was in office (ie February 2010 to April 2015).
- (2) The internal control review commissioned by the Company identified weaknesses including: a lack of formal internal policies and procedures in relation to operating cycles of the Company; lack of written policy on controlling cash payments and handling; lack of control over internet banking system; lack of formal policy on publication of financial results; and lack of formal procedures as to the consideration and authorisation of bonus payments.
- (3) There was no evidence of any guideline or procedures being laid down and circulated to relevant staff members and the directors as to (a) precisely what support was required to accompany payment requests and cheques; (b) the preparation and the checking of such support before it was passed to the directors; and for recipients of the cash withdrawn to account for the application of the funds received with supporting evidence (“**Payment Support and Proof**”).
- (4) For more than four years from April 2012 to June 2016, the Company had no systems and procedures to ensure the supply of monthly updates of the Group’s trading and financial position to all Board members. This system was established only in July 2016.
- (5) The Payments were not prevented or detected by internal controls.

Mr Ang – Breach of GLR5.01(2), (4) and (6)

Mr Ang was an ED of the Company from 19 February 2010 to 9 April 2015. The allegations against Mr Ang in this matter are serious. The Department has not received any submission from Mr Ang. Nonetheless, the Department asserted that Mr Ang knew or must be deemed to be aware of the serious allegations being made against him:

- (1) Mr Ang was in office when the forensic review was conducted. He signed the engagement letter on behalf of the Company regarding the forensic review.
- (2) According to the review reports, the professional firm which conducted the forensic review undertook various steps in conducting the review including having meetings with Mr Ang.
- (3) From February to April 2015, the Company published various announcements disclosing the forensic review findings, Mr Ang’s acknowledgement that he owed \$33 million to the Company; and Mr Ang’s repayment of \$33 million to the Company. Mr Ang remained an ED of the Company until 9 April 2015.
- (4) There was no evidence that Mr Ang protested or expressed disagreement at any time as to the forensic review findings or the Company’s disclosure concerning his conduct.

- (5) Mr Ang had knowledge of the Department's investigation of the Payments. In early October 2016, Department staff telephoned Mr Ang informing of the investigation and the enquiry letter sent to him in September 2016 at his last known address. Mr Ang confirmed that that address remained valid. In November 2016, Mr Ang, through his legal advisers, sought a time extension to reply to the enquiry letter. Despite the granting of a time extension and the expiry of the extended deadline of 30 November 2016, Mr Ang did not provide a substantive response. The Department has not been able to contact him again. Mr Ang could have used this opportunity to inform the Exchange of his account of events if, in his view, the Company's announcements did not give the truth or whole truth regarding the Payments or his conduct, which he has not done.

The Department asserted that the circumstances and matters set out above gave rise to a compelling inference that (a) Mr Ang had procured or otherwise had a part to play in procuring the Company to make the Payments; and (b) by repaying \$33 million to the Company, Mr Ang implicitly acknowledged that the Payments were not proper and/or not properly authorised payments which he had caused the Company to make to himself and third parties.

The Department asserted that by signing the Company's cheques and procuring the Company to effect the Payments, Mr Ang breached his duties as a director under:

- (1) GLR5.01(2) by failing to act for proper purpose; and
- (2) GLR5.01(6) by failing to exercise care, skill and diligence.

Further at the meeting of the Remuneration Committee ("RC") on 1 May 2013, Mr Ang (RC Chairman), and two RC members, Mr Lee and Ms Lu, all voted to approve a monthly salary increase for Mr Ang from \$38,000 to \$60,000 (effective from May 2013). Mr Ang was required to, but did not, abstain from voting. The Department asserted that Mr Ang breached GLR5.01(4) by failing to avoid his conflict of interests and position. Included in Mr Ang's \$33 million repayment to the Company was \$440,000 equivalent to 20 months' of the salary increase.

Note: under GLR5.34, the RC must be chaired by an INED and comprise a majority of INEDs. The Company did not comply with the rule as Mr Ang was the Chairman of the RC from February 2010 to March 2015.

The Department further asserted that Mr Ang's breaches of GLR5.01(2) and 5.01(6) were wilful and persistent given the number of the Payments made and the period over which they were made.

Mr Chen – Breach of GLR5.01(6)

Mr Chen approved the Payments. He co-signed the Company's cheques by which some of the Payments were made. He relied only on Mr Ang's representations as support for the Payments. Mr Chen also signed blank cheques when requested by the Finance Department.

The Department asserted that Directors were required to review materials supplied for their review with care, skill and diligence and exercise their own judgement in deciding whether, based on their review of the support, a payment request is proper and is substantiated. Signing blank cheques poses risks of misuse and improper payments. Mr Chen's conduct was inconsistent with his exercise of care, skill and diligence as a director of the Company. Mr Chen therefore breached GLR5.01(6).

Mr Lee and Ms Lu – Breach of GLR5.01(6)

Included in the Payments was certain "overpaid" salary referred to above and two bonus payments to Mr Ang.

Monthly salary increase

At the RC meeting on 1 May 2013 referred to above, Mr Lee and Ms Lu failed to identify and raise the issue of Mr Ang's conflict of interests. Mr Lee acknowledged that Mr Ang had a conflict of interest.

Bonus payments

At two RC meetings on 1 May 2013 and 30 June 2014 attended by Mr Ang, Mr Lee and Ms Lu, the RC approved bonus payments to Mr Ang (with Mr Lee and Ms Lu voting in favour and Mr Ang abstaining from voting) as summarised below:

Date of RC meeting	Bonus payment to Mr Ang
1 May 2013	\$800,000 for FY2012/2013
30 June 2014	\$2.5 million for FY2013/2014

The bonuses were proposed by Mr Ang. The approval was based on Mr Ang's contribution towards the Company's performance and the results improvement in that the \$378 million loss reported for FY2013/2014 was substantially lower than \$1,573 million loss reported for FY2012/2013.

The Department echoed the concerns expressed in the forensic review report that the bonuses payments did not appear to be supportable:

- (i) The Company had been loss making for years. The core business of the Group continued to perform poorly in FY2012/2013 and FY2013/2014, continuing the loss making trend.

- (ii) The alleged results improvement in FY2013/2014 was primarily due to \$1,000 million impairment difference: Over \$1,300 million impairment of an acquisition was reported in the FY2012/2013 results whilst the FY2013/2014 results reported under \$300 million impairment regarding the same acquisition.
- (iii) Among the major matters underlying the Auditors' disclaimer of opinion expressed on the Company's FY2012/2013 and FY2013/2014 results were significant impairment of assets/investment shortly after their acquisition and material going concern uncertainty.

Mr Lee and Ms Lu did not demonstrate that they approved the bonus payments against any objective or clearly established criteria at the two RC meetings as RC members.

The Department therefore asserted that Mr Lee and Ms Lu breached GLR5.01(6) as required of them as directors who were designated as members of the RC:

- (i) by failing to identify and raise the issue of Mr Ang's conflict of interest at the AC meeting on 1 May 2013; and
- (ii) by approving the bonus payments to Mr Ang in the circumstances as referred to above.

Relevant Directors' breach of GLR5.01(6) – Internal control deficiencies

The Board was collectively responsible for ensuring that the Company had adequate internal controls in place. The Department asserted that the Relevant Directors breached GLR5.01(6) by failing to ensure the Company had adequate internal controls:

- (1) Whilst there were bold assertions of annual review of internal controls, no evidence or details of the review was provided.
- (2) The Company acknowledged that between 2010 and 2015, the Company did not have formal internal control documentation. There was no evidence or submission that any director had applied his/her mind or taken any action in this regard.
- (3) There was no evidence to show that the Relevant Directors had taken steps to establish guidelines and procedures regarding the Payment Support and Proof referred to above.

Mr Chen's breach of GLR5.20

GLR5.20 provides that "*The Compliance Officer's responsibilities must include, as a minimum ... (1) advising on and assisting the board of directors of the issuer in implementing procedures to ensure that the Company complies with the GLR*".

Mr Chen was the Compliance Officer from 31 January 2011 to 22 January 2015. Mr Chen could not recall having made any recommendations regarding financial management. The materials available and Mr Chen's submissions did not offer any detail or evidence of Mr Chen having advised or assisted the Company to implement internal controls or procedures. The Department therefore asserted that Mr Chen breached GLR5.20.

Relevant Directors' breach of Undertakings

The Department asserted that by reason of their respective GLR5.01 and GLR5.20 breaches, the Relevant Directors also breached their Undertakings.

COMMITTEE'S FINDINGS OF BREACH

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

Breach by the Company

The Committee found that in relation to the Late Accounts, the Company breached GLR18.03, 18.48A, 18.49, 18.50C, 18.53, 18.66, 18.78 and 18.79.

Breach by the Relevant Directors

The Committee agreed with the submissions of the Department and made the findings that:

- (i) Mr Ang breached GLR5.01(2), (4) and (6) in relation to the Payments;
- (ii) Mr Chen breached GLR5.01(6) by signing blank cheques; and by only relying on Mr Ang's representations for support in approving the Payments and signing Company cheques;
- (iii) Mr Lee and Ms Lu breached GLR5.01(6) in their discharge of responsibilities as members of the RC by approving the salary increase and bonus payments to Mr Ang in the circumstances as set out above;
- (iv) the Relevant Directors all breached GLR5.01(6) by failing to establish adequate internal controls during the relevant period;

- (v) Mr Chen breached GLR5.20 by failing to comply with his obligation as the Compliance Officer of the Company from 31 January 2011 to 23 January 2015 by reason of his failure to advise or assist the Company to implement internal controls or procedures; and
- (vi) By reason of their respective GLR5.01 and GLR5.20 breaches, each of the Relevant Directors also breached the Undertakings to comply with the GLR to the best of his/her ability.

The Committee further found that Mr Ang's breaches of GLR5.01(2) and 5.01(6) were wilful and persistent given the number of the Payments made and the period over which they were made.

REGULATORY CONCERN

The Committee views the breaches in this case serious:

- (i) The Late Accounts contributed towards the period of trading suspension. The FY2014/15 results, when published, carried Auditors' disclaimer of opinion; and were therefore of little value to the investors and the Company's shareholders.
- (ii) Mr Ang's conduct was egregious in that he had caused the Company to make payments including those to himself when there was inadequate support for the payments.
- (iii) Substantial amounts of money (\$33 million) were involved. But for Mr Ang's voluntary repayment, the Company could have suffered significant monetary loss.
- (iv) The case reveals significant internal control deficiencies as to payment approval process. The internal controls existing in the Company at the relevant time did not prevent or detect the Payments.
- (v) Mr Chen was in a position to prevent at least some, if not all, of the Payments being made. However he relied on Mr Ang's representations as sole support for the Payments. His practice of signing blank cheques posed significant risks of misuse and improper payments.
- (vi) The members of the Remuneration Committee materially breached their duties in the scrutiny and approval of the salary increase and bonus payments to Mr Ang.
- (vii) The case demonstrates the Directors' general lack of understanding of the duties and obligations as directors, the Compliance Officer and the RC members of listed issuers.

SANCTIONS AND DIRECTIONS

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

- (1) censure the Company for the multiple breaches of GLR Chapter 18 set out above;
- (2) censure each of Mr Ang, Mr Shih, Mr Lee, Ms Lu and Mrs Kwan for his/her breaches of GLR5.01 and the Undertakings to the Exchange; and
- (3) censure Mr Chen for his breaches of GLR5.01 and GLR5.20 and the Undertaking to the Exchange.

The Committee further states that whilst Mr Ang has resigned as a director of the Company, had he remained in office, given his conduct amounting to a wilful and persistent breach of his director's duties and therefore a breach of Rule 5.01, in the opinion of the Exchange, his retention of office would have been prejudicial to the interests of investors.

The Committee directs that Mr Ang's conduct in the matter is to be taken into account in the Exchange's assessment of his suitability to be appointed as a director of issuers listed or to be listed on the Exchange in the future under GLR5.02 and the equivalent Main Board rule.

The Committee further directs that:

- (1) The Company is to appoint an independent Compliance Adviser (as defined in GLR Chapter 6A namely, any corporation or authorised financial institution licensed or registered under the Securities and Futures Ordinance for Type 6 regulated activity and permitted under its licence or certificate of registration to undertake work as a sponsor and, as applicable, which is appointed to undertake work as a Compliance Adviser) satisfactory to the Department on an ongoing basis for consultation on GLR compliance for two years within four weeks from the publication of this news release. The Company is to submit the proposed scope of retainer to the Department for comment before appointment of the Compliance Adviser. The Compliance Adviser shall be accountable to the Audit Committee of the Company.
- (2) Mr Lee, who is no longer a director of the Company but who remains a director of another company listed on the Exchange, is to (a) attend 24 hours of training on GLR compliance, director's duties and corporate governance matters to be provided by institutions such as the Hong Kong Institute of Chartered Secretaries, the Hong Kong Institute of Directors or other course providers approved by the Department ("**Training**"), to be completed within 120 days from the publication of this news release; and (b) provide the Department with the training provider's written certification of full compliance.

- (3) Should any of Mr Ang, Mr Chen, Mr Shih, Ms Lu and Mrs Kwan all of whom are not currently directors of any company listed on the Exchange, subsequently be deemed suitable to be appointed as a director of any company listed or to be listed on the Exchange, such person as a pre-requisite to such appointment, is to (a) undergo the Training, to be completed before the effective date of any such appointment; and (b) provide the Department with the training provider's written certification of full compliance.
- (4) The Company is to publish an announcement to confirm that the directions in paragraph (1) have been fully complied with within two weeks after the fulfillment of the direction.
- (5) The Company is to submit a draft of the announcement referred to in paragraph (4) above for the Department's comment and may only publish the announcement after the Department has confirmed it has no further comment on it.
- (6) Following the publication of this news release, any changes necessary and any administrative matters which may emerge in the management and operation of any of the directions set out in paragraphs (1) to (5) above are to be directed to the Department for consideration and approval. The Department should refer any matters of concern to the Committee for determination.

For the avoidance of doubt, the Exchange confirms that the sanctions and directions detailed in this news release apply only to the Company and the Relevant Directors identified above and not to any other past or present board members of the Company.

Hong Kong, 12 September 2018