

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)

**An issuer must maintain adequate and effective internal controls for procuring compliance with the Exchange Listing Rules, including appropriate measures to manage and monitor the reporting of financial information to the issuer's management.**

**An adequate and effective internal control system must not allow one individual director to have complete control over one aspect of one of the issuer's major businesses without a clear framework being established for the regular reporting of those responsibilities to the other members of the board. Mechanics for reporting key financial information which are solely dependent on one individual director without an appropriate back-up were clearly not what is expected of an issuer, with the result that financial information may not be reported accurately to shareholders and the market as in the present case. Appropriate measures must also be in place to ensure the responsibilities of that individual director will be properly managed in the event that he cannot do so for a prolonged period.**

**A director must exercise such degree of skill, care and diligence as may be reasonably expected under Rule 3.08(f) of the Exchange Listing Rules. To discharge such duty, directors must, among other things, take steps to implement and maintain adequate and effective internal controls for procuring the issuer's Exchange Listing Rule compliance, and take an active interest in the affairs of the company and obtain a general understanding of its business, and follow up anything untoward that comes to their attention. Failure to do so may amount to a breach of Rule 3.08(f).**

**The Listing Committee (the "Listing Committee") of The Stock Exchange of Hong Kong Limited (the "Exchange")**

#### **CENSURES:**

- (1) RCG Holdings Limited (now known as China e-Wallet Payment Group Limited) (the "Company")** (Stock Code: 802) for breaching Rule 2.13(2) of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the "**Exchange Listing Rules**") for failing to ensure that the information contained in its announcement published on 28 August 2015 was accurate and complete in all material respects and not misleading;

.../2

- (2) **Mr Wang Zhong Ling (“Mr Wang”)**, chief executive officer and executive director (“**ED**”) of the Company;
- (3) **Mr Li Jing Long (“Mr Li”)**, managing director and ED of the Company;
- (4) **Mr Zhang Li Gong (“Mr Zhang”)**, ED of the Company;
- (5) **Mr Kwan King Wah (“Mr Kwan”)**, an independent non-executive director (“**INED**”) and Chairman of the audit committee (the “**AC**”) of the Company;
- (6) **Mr Liu Wen (“Mr Liu”)**, a former INED, Chairman of the board of directors and an AC member of the Company; and
- (7) **Mr Tse Chin Pang (“Mr Tse”)**, a former INED and an AC member of the Company

for:

- (a) failing to apply such degree of skill, care and diligence required and expected of them with respect to the matters referred to herein, breaching Rule 3.08(f) of the Exchange Listing Rules; and
- (b) failing to comply to the best of their ability with the Exchange Listing Rules (the “**Best Ability Undertaking**”) and use their best endeavours to procure the Company’s Exchange Listing Rule compliance (the “**Best Endeavours Undertaking**”), breaching their obligations under the Declarations and Undertakings with regard to Directors given to the Exchange in the form set out in Appendix 5B to the Exchange Listing Rules (the “**Directors’ Undertakings**”).

(The directors identified at (2) to (7) above are collectively referred to as the “**Directors**”.)

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 Directors.

On 21 November 2017, the Listing Committee conducted a hearing into the conduct of the Company and the Directors in relation to their obligations under the Exchange Listing Rules and the Directors’ Undertakings.

## KEY FACTS

### Original Results and Restated Results

On 28 August 2015 (after trading hours), the Company announced its financial results for the six months ended 30 June 2015 (the “**1H2015**” and “**Original Results**”) reporting, among other items, a net loss of \$12m and a change on fair value of financial assets of \$38.1m. On the following trading day (31 August 2015), the Company’s closing share price dropped 13.6 per cent (from \$0.33 to \$0.285), and the trading volume (20.3m shares) was 0.63 times the preceding 10-day average (32.3m shares) (Hang Seng Index: +0.27 per cent).

On 14 September 2015 (after trading hours), the Company published a Clarification Announcement (the “**Clarification Announcement**”) in respect of its Original Results, adjusting the change on fair value of financial assets in the Original Results from \$38.1m to \$390.4m (and also the value of the financial assets on the balance sheet changed from \$47.3m to \$411.3m) due to an error made on the recognition of an investment in listed securities (the “**Error**”). As a result of the adjustments, the Company’s profit for 1H2015 was restated (from a net loss of \$12m in the Original Results) to \$281.5m profit (the “**Restated Results**”).

On the following trading day (15 September 2015), the Company’s share price went up from the previous closing price of \$0.335 to the highest of \$0.395 (+18 per cent) during the day, and closed at \$0.365 (+9 per cent), and the trading volume (27.7m shares) was 2.1 times the preceding 9-day average (13.3m shares) (Hang Seng Index: -0.49 per cent).

### Background

#### Securities investment

At the material time, Mr Wang (ED and the Company’s CEO) was mainly responsible for the Group’s technology investment and management, managing its investment portfolio and seeking potential investment opportunities in the market.

Since 4 November 2013, the Board has designated certain of the Group’s assets for financial assets investment (the “**Investments**”). Mr Wang was at all material times authorised to make investment decisions not exceeding 5 per cent of the total assets of the Company at any one time without the Board’s prior approval.

The Investments were conducted through three investment accounts maintained by three of the Company's subsidiaries separately, one of which was an investment in the listed shares (the "**Investment**") in China Jicheng Holdings Limited (Stock Code: 1027) ("**Stock 1027**") through an account maintained by Well Bloom Limited (the "**Subsidiary**"). Mr Wang was the sole director of the Subsidiary. He was the only one who received (by email) the monthly statements (the "**Statements**") of the Investment account maintained by the Subsidiary. Mr Wang was also the only person who has electronic access to the Investment account (including checking the account balance, trading securities and executing transactions). Mr Wang managed the other two Investments accounts in the same manner.

Mr Wang and Mr Li (ED and Managing Director) formed an investment committee (the "**Investment Committee**") of the Group responsible for the Investments:

- (1) Mr Wang was designated to be solely responsible for managing and monitoring the Investments;
- (2) Mr Wang would briefly inform Mr Li by telephone of an overview of the Investments and each investment made (including the monetary value of the sale/purchase of the securities, the reasons for the sale/purchase decisions, and the account balance) without mentioning full details. For specific details of an investment decision, Mr Wang only informed Mr Li that he had made certain investment with the investment account without specifying that the investment was made with what securities.
- (3) When there was update in the Investments during the relevant accounting period, Mr Wang would provide the Company's accounting team in Kuala Lumpur, Malaysia with the relevant accounting records by way of ordinary post from Shenzhen, China (where he resides) and notify the Company's Chief Financial Officer (the "**CFO**") via telephone. The accounting team would update the consolidated management accounts of the Group, which would be reviewed by the CFO. The CFO would present the monthly key management accounts (the "**Management Accounts**") to the EDs every month orally by telephone conference. The Management Accounts covering January to June 2015 included information in respect of the Investments and the fair value changes, except that of Stock 1027.
- (4) For every half-year or when there was "material change" (40 per cent or more decrease in value which was set by the Investment Committee since the opening of the Investment account) in the Investments during the relevant accounting period, Mr Wang would:
  - (a) print out the Statements received by email and send them by ordinary post to the accounting team;
  - (b) follow up by a telephone call to the CFO notifying him that the Investments has been updated and the relevant Statements have been dispatched; and
  - (c) in the case of "material change", Mr Wang would also inform Mr Li of an overview of the Investment account, the monetary value of the sale/purchase of securities, reasons for such sale/purchase and the account balance by phone.

- (5) The CFO would inform the accounting team of the updates. Upon receiving the Statements (normally it took about 2 weeks), the accounting team would update the Management Accounts accordingly.
- (6) The CFO would present the Management Accounts, and pass them to the AC and the full Board for review and approval every half year during the Board meetings for approving the interim and annual results respectively.

According to the Company:

- (1) it was not necessary for Mr Wang to report to the full Board whenever such an investment decision was made, as long as he duly made his half-yearly report in respect of the Investments;
- (2) the Directors other than Mr Wang and Mr Li (ie the Investment Committee members) were not aware of the manner in which the Investment Committee had decided to manage and report in relation to the Investments accounts;
- (3) the Board was not aware of the 40 per cent decrease threshold set by the Investment Committee; and
- (4) the Board expected Mr Wang and/or Mr Li to report to the Board should there be any material adverse impact on the Investments.

The Board considered half-yearly reporting as sufficient because originally the Investments accounted for a very minor part of the Group's business activities.

#### Stock 1027

On 13 February 2015, the Subsidiary bought shares in Stock 1027 for \$12.04m. Mr Wang briefly told Mr Li that he had made an investment with the Investment account and the amount of money involved without specifying that it concerned Stock 1027. Mr Li did not ask for further details.

Since the Subsidiary bought Stock 1027 on 13 February 2015, there had been significant increase in the share value:

2015	Feb	Mar	Apr	May	Jun
Market value of shareholding (\$'000)	12,040	20,020	83,020	151,900	364,000

Before 14 September 2015 (ie the day on which the Clarification Announcement was published), the accounting team, the CFO and the Board had no knowledge of the Investment in Stock 1027 and any matter which would have revealed the Error.

### Events leading to the Error

In around May 2015, Mr Wang informed Mr Li that he was unwell and was undergoing some medical treatment without providing details about the nature of his illness. Upon consideration and discussion, Mr Li requested Mr Wang to focus only on managing the Investments while he would take up the remaining duties of Mr Wang during his absence. Mr Li did not consider it necessary to escalate the matter to the Board. During May to end of September 2015, Mr Wang only focused on managing the Investments, whilst Mr Li had taken up the remaining duties from Mr Wang during his absence.

In around mid-July 2015, Mr Wang mailed the Statements covering January to June 2015 to the accounting team. However, as he was sick he forgot to make a follow up call to the CFO. In addition, the Statements were lost in transit unknown to Mr Wang and the CFO/accounting team. As a result, the accounting team assumed that there was no update on the Investments and prepared the Management Accounts without taking into account the new investment in Stock 1027. When handling the funds which were transferred to the Investment account (and eventually utilised for investing in Stock 1027), the accounting team made an inadvertent error and wrongly posted them to the Company's "Translation Reserve" account.

From 31 July 2015 to 21 March 2016, Mr Wang was admitted into hospital as an in-patient for his illness.

On 28 August 2015, the draft Original Results were circulated to the Board (including Mr Wang) by email. The AC and Board meetings were held later on the same day to consider and approve the draft Original Results (while Mr Wang was absent). According to the Company:

- (1) During the AC meeting, the INEDs enquired with the CFO as to the fluctuations in the financial performance of the Group including the significant increase (from \$3.05m to \$47.27m) in the financial assets at fair value which appeared on the balance sheet. The AC then reported to the Board.
- (2) The Board further enquired with the CFO who further explained the increase in the financial assets. The Board eventually approved the Original Results. Mr Wang did not review the draft Original Results until 14 September 2015.

### Discovery of the Error and subsequent steps taken

On 14 September 2015, Mr Wang reviewed the Original Results and made enquiries with the CFO concerning the market value increase in Stock 1027. The CFO then realised that there was an update in the Investment (ie in Stock 1027) in 1H2015. Mr Wang then discovered the Error with the CFO. The CFO urgently called for a Board meeting on the same day to discuss the Error. The Board first became aware of the Investment (in Stock 1027) and the Error at that Board meeting. The Board approved the Restated Results contained in the Clarification Announcement which was later published in the evening on that day.

Directors' knowledge of Mr Wang's medical condition

According to the Company, Mr Wang informed Mr Li only (but not the full Board) that he was unwell and was undergoing some medical treatment without providing details about the nature of his illness. As a result, the Board (except Mr Li) was not aware of the Mr Wang's health issue nor the arrangement between Mr Wang and Mr Li until the board meeting on 14 September 2015.

**Exchange Listing Rule Requirements**

Rule 2.13(2) provides that information contained in any announcement required under the Rules must be accurate and complete in all material respects and not be misleading or deceptive.

**LISTING COMMITTEE'S FINDINGS OF BREACH**

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

**Company's breaches**

The Listing Committee found that, due to the Error, there are material discrepancies between the Original Results and the Restated Results, including, in particular, the amount of the fair value change of financial assets through profit and loss and that the 1H2015 Results turned from a loss of approximately \$12.046 million to a profit of \$281.5 million.

The Listing Committee further concluded that the significant market reaction to the Restated Results supported the view that the discrepancies were material information to the Company's shareholders and the investing public who had been deprived of information which should have been accurate and complete in all material respects and not misleading for making informed investment decisions on the trading of the Company's securities during the period from 31 August to 14 September 2015 (a total of 10 trading days).

The Listing Committee therefore concluded that the Company breached Rule 2.13(2) in that the Original Results announcement was not accurate and complete in all material respects and was misleading.

**Internal controls**

The Listing Committee noted that the Company's internal controls did not prevent or detect the Company's Exchange Listing Rule breach arising from the Error. The Listing Committee concluded that there were material deficiencies in the internal controls, and there was no effective system to enable the Board to monitor its securities investment activities (ie the Investments) carried out by Mr Wang, and no check-and-balance put in place on how Mr Wang managed them. The Listing Committee noted:

- (1) After the Board authorised Mr Wang to manage the Investments, the Board did not require Mr Wang to report to it his investment decisions as long as they were within the upper limit authorised by the Board and duly reported every half-year.
- (2) Contrary to the Company's submission that the Investments accounted for a very minor part of the Group's business (not more than 5 per cent of the Company's total assets at any one time), (a) the Group's internal control manual adopted in March 2014 already stated that "the trading of securities business has become one of the major core businesses of the Group"; (b) the Investments were in fact very significant to the Group if one compares them with the Company's turnover (\$31.85 million) and loss (\$130.25 million) for FY2014 (the preceding year before investing in Stock 1027).
- (3) Although Mr Wang and Mr Li formed the Investment Committee responsible for the Investments, all Statements were emailed to Mr Wang only, and only Mr Wang had electronic access to those accounts.
- (4) Mr Li was only informed briefly by Mr Wang verbally of each investment made without full details, in particular, the securities invested. Therefore, only Mr Wang was in possession of such information. Mr Li did not even know the details of the Investments such as the Investment in Stock 1027.
- (5) Only limited information in respect of the Investments was provided to the EDs in the Management Accounts which only show the total fair value change in the Investments without showing the portfolio.

There was no system by which significant increase in value of the Investments would be reported on a regular basis and/or promptly to the Board, Mr Li (as the other Investment Committee member) or the CFO other than the half-year reporting by Mr Wang to the CFO for preparing the Company's financial statements. The 40 per cent decrease threshold was set by the Investment Committee without consulting or informing the Board. The Board was not involved in setting or aware of the manner in which Mr Wang and Mr Li had decided to manage and report in relation to the Investments accounts, including the 40 per cent decrease threshold. Therefore, the Board was unaware of the associated risk of inaccurate financial reporting by simply relying on the Management Accounts.

There was no adequate and effective system to ensure preparation of accurate and complete financial statements of the Company:

- (1) The Management Accounts prepared by the CFO for the EDs did not include the value increase in Stock 1027 from February to June 2015. Further, the Original Results did not include the fair value change in the Investment (ie the material increase in value in Stock 1027). In addition, the wrongful accounting treatment made by the accounting team mentioned in the second paragraph under the heading of "Events leading to the Error" above was not picked up by the CFO, the AC or the Board before the Original Results announcement was published.

- (2) Even though Mr Wang received the Investment Statements by email, he sent the Statements from China to the CFO in Malaysia only by ordinary post (rather than by email or by registered post or by courier) which was not traceable after they were lost in transit. No other electronic means such as email or fax which was traceable was adopted in parallel. Although Mr Wang would make a follow-up telephone call to the CFO as a matter of practice, such arrangement solely relied on an individual director without any contingency plan.
- (3) The CFO prepared the Original Results without receiving all the Statements nor verifying or confirming with Mr Wang whether there were any material changes.

After discovering the Error, the Company engaged professional consultants to conduct an internal control review (the “**Internal Control Review**”) which identified a number of weaknesses in the Company’s internal controls under which the Error was made. According to the Internal Control Review report, the Company had implemented all the relevant recommendations as at the report date.

#### Directors’ review of internal controls

The Group conducted annual review on the risk management and internal control system (the “**Annual Internal Review**”) during 2011 to 2014. Each of the reviews in these years was conducted by Mr Zhang or Mr Wang, and only on two areas, for example, inventories, financial statement, fixed assets, revenue cycle, payroll cycle and purchase cycle.

Based on the evidence available, the Listing Committee concluded that: (a) the AC had delegated its responsibility for monitoring the quality of the internal control and financial reporting process to an ED each year; (b) the review scope was on a random and limited basis (confining to two areas) for the reason given that the Group did not have significant changes to the operations during all relevant years. Notwithstanding the review scope was confined to two areas every year, some areas had been reviewed twice within 2011 to 2014 (the “financial statement” and “fixed assets” areas were reviewed in 2011 and 2012 respectively and were reviewed again in 2014) while there appears to have been no review in respect of the listed securities investment business (which was a major core business according to its internal control manual); (c) all the reports are in 1-page only and were prepared using purportedly the same template form, each of which was reviewed and approved by the same ED without details specifically on the relevant control procedure under review, any risk identified or any improvements or recommendation, especially the control procedure on “financial statement” was said to have been subject to review in both 2011 and 2014; and (d) there was no discussion by the Board, AC or EDs about the findings of each of the Annual Internal Reviews for the given reason that the Board and the AC were satisfied with the review reports.

The Listing Committee concluded on the evidence presented that the Company did not have adequate and effective internal controls at the relevant time to ensure the Company’s compliance with the Exchange Listing Rules.

### **Directors' breaches**

Under Rules 3.08, 3.16 and 13.04 of the Exchange Listing Rules, the Board is collectively responsible for the Company's management and operations, and the Directors are collectively and individually responsible for ensuring the Company's full compliance with the Exchange Listing Rules.

Rule 3.08 further states that the Exchange expects directors, both collectively and individually, to fulfil fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law, including the duty (under Rule 3.08(f)) to apply such degree of skill, care and diligence as may reasonably be expected of a person of his knowledge and experience and holding his office within the issuer. Rule 3.08 also provides that directors do not satisfy the required levels of skill, care and diligence if they pay attention to the issuer's affairs only at formal meetings. At a minimum, they must take an active interest in the issuer's affairs and obtain a general understanding of its business. They must follow up anything untoward that comes to their attention.

The note to Rule 3.08 states that a director's duties are summarised in "A Guide on Directors' Duties" issued by the Companies Registry. One of the duties is to keep accounting records that are sufficient to show and explain the company's financial position with reasonable accuracy.

### **Mr Wang (ED) – Breach of Rule 3.08(f) and the Director's Undertaking**

The Listing Committee noted Mr Wang's submission that, but for his sickness, he had used his best endeavours to procure the Company's compliance with Rule 2.13(2) and discharged his duty as the Company's director under Rule 3.08(f) to the best of his ability. Mr Wang reiterated that the Error was merely a single incident attributable primarily to his health issue.

The Listing Committee concluded that, given Mr Wang's knowledge, experience and position in the Company, Mr Wang failed to fulfill his duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law, in particular, the duty to keep accounting records that are sufficient to show and explain the Company's financial position with reasonable accuracy. Mr Wang therefore breached Rule 3.08(f) by:

- (1) setting the 40 per cent decrease threshold for the Investments without consulting or informing the Board, as a result of which the Board (other than Mr Li and himself) was unaware that any material increase in value would not be reported to it other than every half-year;
- (2) failing to inform the Board or at least Mr Li, the other member of the Investment Committee, of the securities he had invested in on behalf of the Company;
- (3) failing to inform the Board, Mr Li or at least the CFO of the significant increase in value of Stock 1027 during February and June 2015, in particular, since May 2015 after he informed Mr Li of his health issue;

- (4) allowing/causing the Management Accounts for February to June 2015 (in particular for April, May and June 2015) to have omitted the Investment (in Stock 1027);
- (5) failing to send the Statements to the CFO by at least one more mode of communication (e.g. email, fax, registered post or courier) in addition to ordinary post to ensure that the recipient would receive them;
- (6) taking into account his medical condition, failing to make alternative arrangements with the CFO to determine whether the Statements were duly received after he sent them by ordinary post (which was the only means to follow up on whether the Statements were duly delivered);
- (7) failing to disclose his medical condition and/or state of health to the Board and/or the Company's management to ensure that proper arrangements could be made to ensure that his responsibilities could be properly discharged (in particular, when he was hospitalized from 31 July 2015 to 21 March 2016);
- (8) failing to hand over and/or share the duty to manage and monitor the Investment account with Mr Li and/or other Directors, or a member of the management, since May 2015 after he informed Mr Li of his health issue;
- (9) failing to inform the Board that he would or could not review the draft Original Results before the Board meeting on 28 August 2015 and ask the Board and/or the CFO to contact him if they need clarification or confirmation in respect of any of the Investments (given that he was the only person who had knowledge of the Investment and had access to the Investment account);
- (10) failing to ensure that the Original Results show and explain the Company's financial position with reasonable accuracy; and
- (11) failing to implement and maintain adequate and effective internal controls for procuring Rule compliance. Mr Wang had conducted the Annual Internal Reviews for 2013 and 2014 without identifying those deficiencies.

The Listing Committee also concluded that:

- (1) With his breach of Rule 3.08 as analysed above, Mr Wang also breached his Best Ability Undertaking.
- (2) By reason of his conduct referred above, and being a member of the Investment Committee who was solely responsible for managing and monitoring the Investments accounts (even while he was sick since at least May 2015) and updating the accounting team with the latest financial information relating to the Investment, Mr Wang breached his Best Endeavours Undertaking by failing to use his best endeavours to procure the Company's compliance with Rule 2.13(2) in respect of the Original Results announcement.

Mr Li (ED) – Breach of Rule 3.08(f) and the Director’s Undertaking

The Listing Committee noted Mr Li’s submission including the enquiries concerning the financial assets that he and the other Directors made with the CFO at the board meeting on 28 August 2015 before approving the Original Results announcement.

The Listing Committee concluded that, given the circumstances and his knowledge, experience and position in the Company, Mr Li has failed to fulfill his duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law, in particular, the duty to keep accounting records that are sufficient to show and explain the Company’s financial position with reasonable accuracy. Mr Li therefore breached Rule 3.08(f) by:

- (1) setting the 40 per cent decrease threshold for the Investments without consulting or informing the Board, as a result of which the Board (other than Mr Wang and himself) was unaware that any material increase in value would not be reported to it other than in every half-year;
- (2) allowing/causing the Management Accounts for February to June 2015 (in particular for April, May and June 2015) to have omitted the Investment (in Stock 1027);
- (3) failing to put in place mechanisms to ensure that Mr Wang’s duties (when he was sick) could be properly discharged, for instance, by at least sharing the duty to monitor the Investments with Mr Wang and/or other Directors since May 2015 after Mr Wang informed him of his health issue;
- (4) failing to check regularly with Mr Wang in respect of his medical condition and as to whether he was capable of managing and monitoring any of the Investments since May 2015;
- (5) failing to review the then procedure and the 40 per cent decrease threshold in place at that time on the reporting of the Investments (including the half-yearly regular reporting and the “material change” reporting) in view of Mr Wang’s health issue to consider whether the procedure was sufficient and effective for monitoring the Company’s Investments;
- (6) failing to take an active interest in the Company’s Investments, including, at least, requiring that regular reporting be made to him with details of the Investments;
- (7) failing to escalate Mr Wang’s health issue and the arrangement he made with Mr Wang in relation to the latter’s duties (especially leaving the duty to manage and monitor the Investments with Mr Wang) to the Board for consideration after Mr Wang informed him in around May 2015;
- (8) failing to follow up with Mr Wang on the latest status of the Investments and the balance of the Investments accounts on or before the Original Results were published on 28 August 2015;

- (9) failing to follow up or confirm with the CFO before or at the Board meeting on 28 August 2015 as to whether the latter had received all necessary information concerning the Investments from Mr Wang for preparing the Original Results, and/or the basis upon which the CFO prepared the Original Results concerning in particular the Investments;
- (10) failing to ensure that the Original Results announcement was accurate and complete in all material respects and was not misleading; and
- (11) failing to implement and maintain adequate and effective internal controls for procuring Rule compliance, especially given that Mr Li was an ED and one of the two members of the Investment Committee with specific responsibilities.

While Mr Li and the other Directors all submitted that before 14 September 2015 they were not informed of the full details and the seriousness of Mr Wang's health issue, the Listing Committee noted that the minutes of the Board meeting of 28 August 2015 (all the Directors attended except Mr Wang) recorded that "... *The Board was informed and acknowledged of [Mr Wang]'s absence to the Meeting due to his poor health. Nevertheless, the necessary quorum was present throughout the meeting*". The Listing Committee concluded that at least since 28 August 2015 Mr Li and the other Directors had been aware of the seriousness of Mr Wang's health condition. Notwithstanding this, Mr Li failed to take any of the steps mentioned in the preceding subparagraphs (7) to (10).

The Listing Committee also concluded that:

- (1) With his breach of Rule 3.08 as analysed above, Mr Li also breached his Best Ability Undertaking.
- (2) By reason of his conduct referred above, and being the other member of the Investment Committee, an ED and the managing director of the Group, Mr Li breached his Best Endeavours Undertaking to procure the Company's compliance with Rule 2.13(2) in respect of the Original Results announcement.

#### Mr Zhang (ED) – Breach of Rule 3.08(f) and the Director's Undertaking

The Listing Committee noted Mr Zhang's submission including the enquiries concerning the financial assets that he and the other Directors made with the CFO at the board meeting on 28 August 2015 before approving the Original Results announcement.

The Listing Committee concluded that, given the circumstances and the knowledge, experience and position of Mr Zhang in the Company, Mr Zhang has failed to fulfill his duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law, in particular, the duty to keep accounting records that are sufficient to show and explain the Company's financial position with reasonable accuracy. Mr Zhang therefore breached Rule 3.08(f) by:

- (1) failing to take an active interest in the Company's Investments, including, at least, requiring that regular reporting be made to him with details of the Investments;
- (2) failing to raise with the Board and ask Mr Li who was a member of the Investment Committee as to why Mr Wang was absent from the Board meeting to consider and approve the draft Original Results, and/or consider whether further steps should be taken to ascertain the accuracy of the financial results due to Mr Wang's absence who was in charge of the Investments;
- (3) failing to clarify with the CFO before or at the Board meeting on 28 August 2015 whether all financial information relating to the Investments had been verified with or confirmed by Mr Wang as accurate and complete and/or the basis upon which the CFO prepared the Original Results concerning in particular the Investments;
- (4) failing to ascertain from Mr Wang and Mr Li as to the internal controls for monitoring the Investments (Mr Zhang was unaware of the arrangements and in particular the 40 per cent decrease threshold); and
- (5) failing to implement and maintain adequate and effective internal controls for procuring Exchange Listing Rule compliance.

The Listing Committee noted the Board minutes which recorded the Board's knowledge of Mr Wang's poor health condition at least before it approved the Original Results at the Board meeting of 28 August 2015, and notwithstanding this, Mr Zhang failed to take any of the steps mentioned in the preceding sub-paragraphs (2) to (4).

The Listing Committee also concluded that giving authority to Mr Wang to invest does not absolve the Board's duty from monitoring the investment activity.

The Listing Committee also concluded that:

- (1) With his breach of Rule 3.08 as analysed above, Mr Zhang also breached his Best Ability Undertaking.
- (2) By reason of his conduct referred to above and, in particular, Mr Zhang was one of the EDs at the material time who also received the monthly Management Accounts, he breached the Best Endeavours Undertaking by failing to use his best endeavours to procure the Company's compliance with Rule 2.13(2) in respect of the Original Results announcement.

Mr Kwan, Mr Liu and Mr Tse (all INEDs and AC members) – Breach of Rule 3.08(f) and the Directors' Undertakings

The Listing Committee noted that:

- (1) The submissions of Mr Kwan and Mr Liu are essentially the same as Mr Zhang.
- (2) Mr Tse submitted that he had made the enquiries together with the other Directors concerning the financial assets and had no personal knowledge of the arrangements put in place by the Directors and Mr Wang relating to the Investments, the Board's authorisation to Mr Wang to manage the Investments, the Investment in Stock 1027, Mr Wang's health condition and the Error until 14 September 2015. He therefore submitted that the Original Results announcement was made to the best of his knowledge.

The Corporate Governance Code requires that (a) every director must always know the issuer's conduct, business activities and development (Code Principle A.6), (b) a newly appointed director should receive a comprehensive formal and tailored induction on appointment (Code Provision A.6.1), (c) non-executive directors should monitor the issuer's performance reporting (Code Provision A.6.2(d)). Although Mr Tse only joined the Board as an INED less than two months before the Original Results were published on 28 August 2015, the Listing Committee concluded that he should also have taken at least the same steps as Mr Zhang should have done in subparagraphs (2) to (4) thereunder, particularly as he submitted that he had not prior to joining the Board met any of the directors to discuss the business or management of the Company and that he had no personal knowledge of the arrangements in place relating to the Investments.

The Listing Committee concluded that Mr Kwan, Mr Liu and Mr Tse breached Rule 3.08(f) for the following reasons:

Failing to discharge the AC's duties

- (1) The Terms of Reference of the AC in effect at the material time which were adopted by the Board on 28 March 2012 include:
  - (a) "Monitoring the integrity of the Company's financial statements and annual report and accounts, half-year report...In reviewing these reports before submission to the Board, the AC should focus particularly on...major judgmental areas, significant adjustments resulting from audit...and compliance with the Listing Rules...and legal requirements in relation to financial reporting";
  - (b) "Considering any significant or unusual items that are, or may need to be, reflected in the reports and accounts... give due consideration to any matters that have been raised by the Company's staff responsible for the accounting and financial reporting function, compliance officer or auditors"; and
  - (c) "Overseeing the Company's financial reporting system and internal control procedures, including reviewing the Company's financial controls, internal control and risk management systems, discussing the internal control system with management to ensure that management has performed its duty to have any effective internal control system (including the adequacy of resources, staff qualifications and experience, training programmes)".

- (2) The AC has been authorised by the Board to inspect all accounts, books and records of the Company, and had the right to require the Company's management to furnish information on any matter relating to the financial position of the Company, its subsidiaries or affiliates, as may be required for the purposes of discharging its duties.
- (3) The Corporate Governance Report contained in the Company's 2014 annual report published on 29 April 2015 stated that "*The Audit Committee performed its primary responsibility for monitoring the quality of internal control and financial reporting process and ensuring that the performance of the Company's auditors relating to the Company's accounting and auditing matters is of good quality. The Audit Committee also held meetings with the Company's auditors to discuss the auditing, internal control and financial reporting matters of the Company*".
- (4) According to the Company's submission, the AC would meet at least twice a year to review and discuss the Company's financial results before presenting them to the Board for review and approval. However, the Listing Committee noted that the Annual Internal Reviews were only conducted by an ED, and the review was only a random and partial one in scope. According to the Company, there was no discussion during the AC meetings. The Annual Internal Review reports were only made available for the review by the full Board and the AC instead. It appears to the Listing Committee that the AC merely rubber-stamped the 1-page review reports prepared by the EDs without any discussion. As a matter of fact, the internal control system in effect at the material time failed to detect the Error.

*Not taking active interest in the Company's affairs*

- (5) Rule 3.08 states that "...directors do not satisfy these required levels if they pay attention to the listed issuers' affairs only at formal meetings...At a minimum, they must take an active interest in the issuer's affairs and...follow up anything untoward that comes to their attention".
- (6) As INEDs, the Listing Committee expected them to exercise their independent judgement and to give the Board the benefit of their skills, expertise and varied backgrounds and qualifications through active participation.
- (7) The Listing Committee concluded that the INEDs, having the respective knowledge, experience and position in the Company, should have also taken steps to discharge their duty under Rule 3.08(f) by applying such degree of skill, care and diligence as may be reasonably expected under that Rule. Mr Kwan and Mr Liu should have taken at least the same steps which Mr Zhang should have taken in sub-paragraphs (2) to (5) thereunder and in the case of Mr Tse, at least the same steps in sub-paragraphs (2) to (4) thereunder (acknowledging that he only became a Director of the Company on 1 July 2015), to discharge their duties required under Rule 3.08(f). However, in response to the Listing Department's investigation, they submitted that because the Board had authorised Mr Wang to make the Investments, the Board (other than Mr Wang and Mr Li) was not aware of how Mr Wang and Mr Li had decided to manage and report in relation to the Investments accounts, including the 40 per cent decrease threshold for triggering a duty to report to the CFO about the "material change" in value in the Investments.

The Listing Committee therefore concluded that Mr Kwan, Mr Liu and Mr Tse failed to discharge the duties of the AC set out above, especially when it has been given the power to obtain any financial information of the Company and its subsidiaries (ie including the Subsidiary) from the management.

The Listing Committee further noted the Board minutes which recorded the Board's knowledge of Mr Wang's poor health condition at least before it approved the Original Results at the Board meeting of 28 August 2015, and notwithstanding this, they failed to take any of those steps as Mr Zhang should have also taken in sub-paragraphs (2) to (4) thereunder.

In view of the above circumstances, the Listing Committee concluded that Mr Kwan, Mr Liu and Mr Tse breached Rule 3.08(f).

The Listing Committee further concluded that:

- (1) With their breach of Rule 3.08 as analysed above, Mr Kwan, Mr Liu and Mr Tse also breached their Best Ability Undertakings.
- (2) By reason of their conduct referred to above and, in particular their duties as INEDs and AC Chairman or members in respect of the Company's financial reporting, they breached their Best Endeavours Undertakings to procure the Company's compliance with Rule 2.13(2) in respect of the Original Results announcement.
- (3) Use of best endeavours would have required Mr Kwan and Mr Liu to at least take the same steps as Mr Zhang should have taken as set out in sub-paragraphs (2) to (5) thereunder (and Mr Tse to take at least the same steps as in sub-paragraphs (2) to (4) thereunder), in particular since they only received the Management Accounts half-yearly rather than monthly as the EDs did. The INEDs' failure to take any of those steps demonstrated a lack of proactivity on their part in procuring the Company's compliance with Rule 2.13(2) in respect of the 1H2015 financial results, and was inconsistent with the use of best endeavours required under their Directors' Undertakings.

Notwithstanding the Annual Internal Reviews conducted by the two EDs (Mr Zhang and Mr Wang), there was no discussion with the AC in respect of the review results. The Directors (except Mr Tse who only became a Director of the Company on 1 July 2015) had not demonstrated that they had taken steps consistent with their performance of their Best Endeavours Undertakings to ensure the Company had established and maintained adequate and effective internal controls through which the Company's Exchange Listing Rule compliance can be procured and achieved. They therefore breached their Best Endeavours Undertakings also by failing to ensure the Company had adequate and effective internal controls in place to procure the Company's Rule compliance.

## **REGULATORY CONCERN**

The Listing Committee regards the breaches in this matter as serious:

- (1) The interest of the Company's shareholders had been prejudiced in terms of their right to receive accurate and complete and not misleading information to enable them to appraise the Company's position for making informed investment decision. There was trading in the Company's shares from 29 August to 14 September 2015 and in particular, significant share trading movements after the Original Results and the Restated Results were announced.
- (2) Directors have an obligation to ensure that the company's announcement be accurate and complete in all material respects and not be misleading or deceptive. Failure to do so destroys transparency, trust and confidence in the market.
- (3) There were material deficiencies in the Company's then internal control system which partly contributed to the Error. The fact of Mr Wang's illness merely demonstrated the weaknesses in the internal controls and distribution of management responsibilities in place during the relevant period.
  - (a) On one level, it cannot be acceptable that one individual is given complete control over one aspect of the Company's business without a clear framework being established for the regular reporting of those responsibilities to the other members of the board and appropriate measures to cover in the event of illness.
  - (b) On another level, the mechanics for reporting to the CFO and lack of back-up were clearly not what is expected of a listed company, with the result that financial information was not reported accurately to shareholders and the market.

#### Remedial Actions

The Listing Committee noted that the Company has taken remedial actions after discovery of the Error:

- (1) The Company had engaged professional consultants to conduct the Internal Control Review and implemented all the recommendations as remedial action.
- (2) For updates on the Investments, both Mr Wang and Mr Li would be immediately made aware of the details of the Investments;
- (3) On 24 March 2016, the Company published advertisement for hiring additional qualified accountants to join the accounting team; and
- (4) For future preparation of financial results and statements (starting from the 2016 interim results published in September 2016), the Company would engage its external auditors to assist on the preparation.

#### **SANCTIONS**

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

- (1) Censure the Company for its breach of Rule 2.13(2); and
- (2) Censure the Directors for breach of Rule 3.08(f) and their respective Directors' Undertakings.

The Listing Committee further directs:

- (1) Mr Wang, Mr Li, Mr Zhang and Mr Kwan to each (a) attend 24 hours of training on Exchange Listing Rule compliance and director's duties, including 4 hours of training on corporate governance and internal controls (the "**Training**"), 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 Listing Department. The Training is to be completed within 90 days from the publication of this news release; and (b) provide the Listing Department with the training provider's written certification of full compliance within two weeks after training completion.
- (2) As a pre-requisite of any future appointment as a director of any company listed on the Exchange, Mr Liu and Mr Tse, who are not currently directors of any other company listed on the Exchange, (a) to attend the Training as a pre-requisite of any future appointment as a director of any company listed on the Exchange, to be completed before the effective date of any such appointment; and (b) to provide the Listing Department with the training provider's written certification of full compliance.
- (3) 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 respective fulfillment of the direction.
- (4) The Company to submit a draft of the announcement referred to in sub-paragraph (3) above for the Listing Department's comment and may only publish the announcement after the Listing Department has confirmed it has no further comment on it.
- (5) 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 (4) above are to be directed to the Listing Department for consideration and approval. The Listing Department should refer any matters of concern to the Listing Committee for determination.

Hong Kong, 22 January 2018