

**A listed issuer's obligation to comply with the financial reporting requirements under the Exchange Listing Rules should not be taken lightly. Disclosure underpins the maintenance of an orderly, informed and fair market for the trading of securities in Hong Kong. The Exchange attaches great importance to these requirements which are designed to ensure that investors have confidence in the market.**

**Preliminary announcement of results play a key part in a listed issuer's annual financial reporting cycle. It is the issuer's first disclosure of information concerning its full year's performance, which is an important piece of information necessary for the investors to appraise the listed issuer's performance and future prospect, and to make their investment decisions.**

**Directors are responsible for preparing the listed issuer's financial statements, which must give a true and fair view of the state of affairs of the issuer, and of the results of its operations and its cashflows.**

**Publication of purported preliminary results within the time prescribed under Rule 13.49(1), which do not convey any meaningful information about the listed issuer's financial position and performance, does not amount to compliance with that Rule.**

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

**CENSURES:**

(1) **Kiu Hung International Holdings Limited ("Company")** (Stock Code: 381)

for breaching Rules 13.46(2)(a), 13.49(1) and 13.49(2), and Appendix 16 of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited ("**Exchange Listing Rules**") for failing to:

- (i) obtain the auditor's agreement to the contents of the Company's announcement ("**2015 Results Announcement**") of preliminary results for the year ended 31 December 2015;

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- (ii) publish the Company's announcement of preliminary results for the year ended 31 December 2016 ("**2016 Annual Results**"), which give a true and fair view of the state of affairs of the Company, and of the results of its operations and its cashflows, in a timely manner; and
- (iii) despatch the Company's annual report for the year ended 31 December 2016 ("**2016 Annual Report**") within the time prescribed under the Exchange Listing Rules;

**AND CENSURES:**

- (2) **Mr Hui Kee Fung**, current executive director ("**ED**") and Chairman of the Company;
- (3) **Mr Yu Won Kong, Dennis**, current ED and Chief Executive Officer of the Company;
- (4) **Mr Zhang Qi Jun**, current ED of the Company;
- (5) **Mr Zhang Yun**, current ED of the Company;
- (6) **Mr Cheung Man Loon, Michael**, current independent non-executive director ("**INED**") of the Company;
- (7) **Mr So Chun Pong, Ricky**, current INED of the Company;
- (8) **Mr Wang Xiao Ning**, current INED of the Company;
- (9) **Dr Lau Siu Wa**, former ED of the Company ("**Dr Lau**"); and
- (10) **Mr Suen Chun Hung, Benjamin**, former INED of the Company ("**Mr Suen**"),

for breaching their obligations under the Declaration and Undertaking with regard to Directors given to the Exchange in the form set out in Appendix 5B to the Exchange Listing Rules ("**Undertaking**") for failing to use their best endeavours to procure the Company's compliance with the Exchange Listing Rules in relation to the publication of the preliminary announcement of its 2016 Annual Results and the despatch of its 2016 Annual Report (the directors identified at (2) to (10) above are collectively referred to as "**Relevant Directors**").

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

## HEARING

On 15 January 2019, the Listing Committee conducted a hearing into the conduct of the Company and the Relevant Directors in relation to their obligations under the Exchange Listing Rules and the Undertaking.

On 16 April 2019, the Listing Committee conducted a disciplinary (review) hearing (“**Review Committee**”) on the application by the Relevant Directors for a review of the sanctions imposed on them by the Listing Committee at first instance (“**Disciplinary (Review) Hearing**”).

## KEY FACTS

### *2015 Results Announcement*

On 1 April 2016, the Company published its 2015 Results Announcement which stated that the financial figures contained in the announcement had been agreed by the then auditors, Cheng & Cheng Limited (“**Cheng & Cheng**”). On 22 April 2016, the Company published a clarification announcement with revised figures for some of the items disclosed in the 2015 Results Announcement.

The Company asserted, among others, that:

- (i) the 2015 Results Announcement was approved by the Company’s audit committee (“**Audit Committee**”) and the board of directors (“**Board**”) on 31 March 2016, subject to some fine-tuning. Cheng & Cheng only made further comments by email at 7:49 am on 1 April 2016, when the printer was about to upload the 2015 Results Announcement; and
- (ii) the Company’s chief financial officer and finance staff assessed Cheng & Cheng’s comments, which they considered insignificant and did not outweigh the risk of breaching Rule 13.49(1), so the chief financial officer instructed the printer to proceed to publish the 2015 Results Announcement at 7:59 am.

The 2015 Results Announcement was uploaded at 8:19 am.

### *2016 Annual Results and Report*

On 1 March 2017, the Company announced that Cheng & Cheng resigned as its auditors with effect from 1 March 2017. On 17 March 2017, the Company announced that its shareholders resolved to appoint Zhonghui ANDA CPA Limited (“**Zhonghui**”) as its auditors.

The Company published a preliminary announcement of the 2016 Annual Results on 2 April 2017 (“**First 2016 Results Announcement**”), which contained Zhonghui’s disclaimer of opinion (“**2016 Disclaimer Opinion**”). According to the “[e]xtract of the auditor’s report”, Zhonghui had not been able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion on the following 15 items (“**Disclaimed Items**”):

- (i) Exploration and evaluation assets;
- (ii) Investment in associates;
- (iii) Available-for-sales financial assets;
- (iv) Inventories;
- (v) Prepayment, deposits and other receivables;
- (vi) Accruals and other payables;
- (vii) Promissory notes;
- (viii) Derivative financial liabilities;
- (ix) Borrowings;
- (x) Deferred income tax liabilities;
- (xi) Transaction, income and expenses items for the year;
- (xii) Commitments and contingent liabilities;
- (xiii) Consolidated statement of changes in equity and consolidated statement of cashflows;
- (xiv) Other disclosure in the consolidated financial statements; and
- (xv) Material uncertainty relating to the going concern basis.

The First 2016 Results Announcement also stated that “*the Company’s auditors was newly appointed on 17 March 2017 to fill the casual vacancy following the resignation of [Cheng & Cheng] ... Due to time constraints and the Company’s auditor may not have sufficient time to analyse the audit evidence provided by the Company to the auditor, the Board regrets that the Company’s auditor did not express an audit opinion on the Group’s consolidated financial statements for the year ended 31 December 2016*” (“**Time Constraint Statement**”).

In view of the 2016 Disclaimer Opinion, the Listing Department required the Company to suspend trading of the Company’s shares on 3 April 2017.

On 30 May 2017, the Company published a revised preliminary results announcement (“**Second 2016 Results Announcement**”), in which Zhonghui revised its opinion from a disclaimer to a qualified audit opinion relating to four items and the material uncertainty related to going concern. The Company despatched its 2016 Annual Report on the same day.

Trading of the Company’s shares resumed on 31 May 2017.

The Company asserted, among others, that:

- (i) Zhonghui did not have sufficient time to perform the audit work and analyse the evidence provided by the Company. The First 2016 Results Announcement reflected what Zhonghui had agreed;
- (ii) Zhonghui requested more time to complete the audit and suggested the Company to postpone the publication of the First 2016 Results Announcement. The Relevant Directors did not accede to the request as they did not want the Company to breach Rule 13.49(1);

- (iii) on 2 April 2017 prior to the publication of the First 2016 Results Announcement, when the Audit Committee asked Zhonghui whether the 2016 Disclaimer Opinion would be removed or modified if more time was given to it to perform the audit, Zhonghui declined to comment; and
- (iv) the Second 2016 Results Announcement was an updated version of presenting the financial status of the Company after Zhonghui had conducted more work. The Company had to revise the First 2016 Results Announcement to address the Listing Department's concerns.

Zhonghui asserted that it disagreed with the Time Constraint Statement and had reviewed all the information then provided by the Company when the First 2016 Results Announcement was published. The Company was able to provide further information to Zhonghui after the publication of the First 2016 Results Announcement for the purposes of the audit of the 2016 Annual Results.

## **EXCHANGE LISTING RULE AND OTHER REQUIREMENTS**

Rules 13.49(1) and 13.46(2)(a) require that a listed issuer publishes and despatches its respective annual results and annual report for the financial year not later than three and four months respectively after the end of the financial year.

Rule 13.49(2) provides that the preliminary announcement of annual results shall be based on the listed issuer's financial statements for the financial year which shall have been agreed with the auditors.

Appendix 16 to the Exchange Listing Rules "Disclosure of Financial Information" ("**Appendix 16**"), which forms part of the Exchange Listing Rules, provides, among others, that:

- (i) each set of financial statements presented in an annual report shall provide a true and fair view of the state of affairs of the listed issuer, and of the results of its operations and its cashflows (paragraph 2);
- (ii) directors must ensure that the information contained in the preliminary announcement of results is consistent with the information that will be contained in the annual reports (paragraph 45); and
- (iii) the Exchange does not expect there to be any material or substantial difference between the information contained in the listed issuer's preliminary announcement of results and that contained in its audited results (paragraph 45A.1).

A director of a listed issuer is under an obligation, pursuant to his Undertaking, to comply to the best of his ability with the Exchange Listing Rules and to use his best endeavours to procure the Company's compliance with the Exchange Listing Rules.

Code provision C.1.3 of the Corporate Governance Code ("**Code**") (Appendix 14 to the Exchange Listing Rules) requires that the directors should acknowledge in the corporate governance report their responsibility for preparing the accounts.

Code provision C.3.3 of the Code provides, among others, that the audit committee's terms of reference should include its monitoring of the integrity of the company's financial statements, with particular focus on, among others, compliance with the Exchange Listing Rules.

Sections 379 and 380 of the Companies Ordinance, Cap 622, provide that a company's directors must prepare for each financial year statements, which must give a true and fair view of the financial position and performance of the company as at the end of the financial year.

## **LISTING COMMITTEE'S FINDINGS OF BREACH**

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

### **Company's breaches**

The Listing Committee noted the Company's admission of breaches of Rules 13.46(2)(a), 13.49(1) and 13.49(2), and Appendix 16 to the Exchange Listing Rules and found that the Company did breach these Rules by:

- (i) failing to obtain Cheng & Cheng's agreement to the contents of the 2015 Results Announcement prior to its publication (in breach of Rule 13.49(2)). It was clear from the materials available that Cheng & Cheng did not agree to some of the contents of the 2015 Results Announcement, by reason of its further comments provided to the Company at 7:49 am on 1 April 2016;
- (ii) failing to publish the preliminary announcement of the 2016 Annual Results within three months after 31 December 2016 (in breach of Rule 13.49(1)). Although the Company published the First 2016 Results Announcement in purported compliance with Rule 13.49(1), given the nature and extent of the 2016 Disclaimer Opinion, the contents of the First 2016 Results Announcement did not give a true and fair view of the state of affairs of the Company, and of the results of its operations and its cashflows (in breach of Appendix 16). They were meaningless to the shareholders and investors for their assessment of the Company's financial performance or position. The publication of such purported preliminary results, even if published within the prescribed time limit, did not amount to compliance with the relevant financial reporting obligation under Rule 13.49(1); and
- (iii) failing to publish the 2016 Annual Report within four months after 31 December 2016 (in breach of Rule 13.46(2)(a)).

### **Relevant Directors' breaches**

The Listing Committee noted that the Relevant Directors admitted the breach of their respective Undertaking for failing to use their best endeavours to procure the Company's compliance with Rules 13.46(2)(a) and 13.49(1), and Appendix 16, and found that they did breach their respective Undertaking:

- (i) there was a time constraint issue either on the part of the Company or Zhonghui. The evidence available suggested that it was more likely that the Company did not provide all the information requested by Zhonghui by the time the First 2016 Results Announcement was published;
- (ii) in any event, given the responsibilities of the directors in preparing the Company's financial statements which must give a true and fair view of the state of affairs of the Company, and of the results of its operations and its cashflows, as at the end of the financial year (as required under the Exchange Listing Rules and the Companies Ordinance), the Relevant Directors failed to use their best endeavours to allow the proper completion of the audit; and
- (iii) the Relevant Directors had knowledge of the Disclaimed Items in the First 2016 Results Announcement and they approved the First 2016 Results Announcement at the Board meeting. The contents of the First 2016 Results Announcement were effectively meaningless to the shareholders and investors for their assessment of the Company's financial performance and position. The conduct of the Relevant Directors resulted in the Company's breach of Rules 13.49(1) and 13.46(2)(a) (by way of the consequential delay in its despatch of the 2016 Annual Report), and Appendix 16.

At the Disciplinary (Review) Hearing, the Review Committee upheld the decision of the Listing Committee at first instance in respect of the sanctions and directions imposed on the Relevant Directors. The Review Committee considered that:

- (1) Notwithstanding that the Company stated that they started to provide information in January 2017, the Relevant Directors were fully aware that Zhonghui was only newly appointed in March 2017 as the Company's auditors in performing the audit of the Company's annual results for the year ended 31 December 2016 ("**2016 Audit**"). Given their director's responsibilities in preparing the Company's financial statements which must give a true and fair view of the state of affairs of the Company, the Relevant Directors should have taken more proactive measures to procure better audit planning of the Company and to ensure timely financial information flow between the Board and Zhonghui to facilitate completion of the 2016 Audit. By failing to do so, the Relevant Directors put themselves into the position where the first draft audit report was only available for review on the weekend before the publication deadline of the First 2016 Results Announcement.
- (2) Despite the Relevant Directors' knowledge of the Disclaimed Items in the First 2016 Results Announcement, they approved the publication of the First 2016 Results Announcement at the Board meeting. The Relevant Directors relied on the confirmation from the Company's management that the contents of the First 2016 Results Announcement reflected a fair view of the Company's financial performance and situation for 2016. They did not take the opportunity to seek legal advice or to discuss with the Exchange. The contents of the First 2016 Results Announcement were effectively meaningless to the shareholders and investors for their assessment of the Company's financial performance and position.

- (3) In relation to the Relevant Directors who were only appointed as directors of the Company in late 2016, they were fully aware of the Company's circumstances in respect of its financial audit since the date they joined the Company. The Review Committee did not consider that their late appointment would absolve them from their director's responsibilities in relation to the Company's financial statements.

## **REGULATORY CONCERN**

The conduct in question raises concerns over the Company's compliance with, and the attitude of the Relevant Directors about, the Company's financial reporting obligations under the Exchange Listing Rules. The relevant conduct damaged, or had the potential to damage, the integrity of the market.

Disclosure underpins the maintenance of an orderly, informed and fair market for the trading of securities in Hong Kong. Preliminary announcement of results play a key part in a listed issuer's annual financial reporting cycle. It is the issuer's first disclosure of information concerning its full year's performance, which is an important piece of information necessary for the investors to appraise the listed issuer's performance and future prospect, and to make their investment decisions.

A listed issuer's obligation to comply with Rule 13.49(1) should not be taken lightly. In this case, the Company's First 2016 Results Announcement did not give a true and fair view of the state of affairs of the Company, and of the results of its operations and its cashflows. Publication of purported preliminary results within the time prescribed under Rule 13.49(1), which do not convey any meaningful information about the listed issuer's financial position and performance, does not amount to compliance with that Rule.

The Company and its directors have vital roles to play in the processes leading up to the release of the preliminary announcements of results. The Company's attitude towards compliance with its financial reporting obligations is unacceptable. It purportedly complied with Rule 13.49(1) but disregarded the purpose of the financial reporting obligations under the Exchange Listing Rules. It did not wish to defer publication of the 2015 Results Announcement and the First 2016 Results Announcement, and proceeded to publish those announcements despite knowing that:

- (i) some of the figures in the 2015 Results Announcement were incorrect;
- (ii) the audit of the 2016 Annual Results was substantially incomplete; and
- (iii) there were 15 Disclaimed Items.

The financial information contained in the First 2016 Results Announcement could not be relied upon and effectively did not give any information on the Company's financial position and performance to the market. The Company's shareholders and investors were deprived of timely, accurate and sufficient information based on which to trade in the Company's shares.

In relation to the First 2016 Results Announcement, the Company asserted that it had to revise the First 2016 Results Announcement to address the Listing Department's concerns. It must be emphasised that it is the primary responsibility of the Company and the Relevant Directors to prepare the accounts and publish the 2016 Annual Results which present a true and fair view of the state of affairs of the Company, and of the results of its operations and its cashflows for the year ended 31 December 2016. Such obligation did not arise only because the Listing Department had concerns over the First 2016 Results Announcement.

## **SANCTIONS**

Having made the findings of breach stated above, the Listing Committee decided to:

- (1) censure the Company for its breach of Rules 13.46(2)(a), 13.49(1) and 13.49(2), and Appendix 16; and
- (2) censure the Relevant Directors for their breach of Undertakings.

The Listing Committee further directed:

- (1) the Relevant Directors (apart from Dr Lau and Mr Suen) to (i) attend 18 hours of training ("**Training**") on Exchange Listing Rule compliance and director's duties, including 4 hours of training on the financial reporting obligations under the Exchange Listing Rules, 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, such Training to be completed within 90 days from the publication of this news release; and (ii) 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/to be listed on the Exchange, Dr Lau and Mr Suen, former directors of the Company, who are currently not directors of any other company listed on the Exchange, (a) to attend the Training, 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 is to publish an announcement to confirm that the direction in paragraph (1) above has been fully complied with within two weeks after Training completion;
- (4) the Company is to submit a draft announcement referred to in 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; and
- (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.

The Review Committee on review decided to endorse the sanctions and the directions imposed on the Relevant Directors by the Listing Committee at first instance.

Hong Kong, 12 June 2019