

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)

**THIS DISCIPLINARY ACTION concerns the Company's failure to comply with the procedural requirements in respect of notifiable transactions and the directors' failure to perform their fiduciary duties, being part of the Exchange's themes of enforcement that were adopted in 2014 and revised in 2017.**

**This decision underlines the importance of keeping shareholders and the public fully informed, in a timely manner, of material factors which might affect their interests so as to enable them to make an informed assessment of the issuer. Shareholders should not be deprived of their right to receive information and to vote on matters where they are required and/or entitled to do so.**

**This decision also highlights the importance of the directors' performance of their fiduciary duties to review the issuer's management accounts to ensure it is accurate and complete as well as to ensure the issuer establishes and maintains appropriate and effective risk management and internal control systems for the purpose of managing the risks within the organisation and supporting the issuer's compliance with the Exchange Listing Rules.**

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

#### **CENSURES:**

- (1) **Kong Sun Holdings Limited** ("Company") (Stock Code:295) for failing to:-
  - (a) comply with the announcement, circular and shareholders' approval requirements with respect to the Loans & Advances, in breach of Rules 13.13, 13.15, 14.34, 14.40 and 14.41 of the Rules Governing the Listing of Securities of The Stock Exchange of Hong Kong Limited ("LR");
  - (b) despatch and/or publish its Financial Reports within the time specified under LR13.46(2)(a), 13.49(1) and 13.49(6);

#### **AND FURTHER CENSURES:**

- (2) **Mr Liu Wen Ping** ("Mr Liu"), a former executive director ("ED") of the Company who resigned on 13 April 2017; **and**
- (3) **Mr Chang Hoi Nam** ("Mr HN Chang"), a former ED of the Company who resigned on 13 April 2017,

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for failing to:

- (a) apply such degree of skill, care and diligence required and expected of them in taking reasonable steps to understand the Group's management accounts as well as to establish and maintain an effective and appropriate internal control procedure and risk management system, in breach of LR3.08(f); and
  - (b) comply with the Director's Declaration and Undertaking given to the Exchange in the form set out in Appendix 5 Form B to the LR ("Undertaking") to use their best endeavours to procure the Company's LR compliance and comply with the LR to the best of their abilities;
- (4) **Dr Ma Ji** ("Dr Ma"), a former non-executive director ("NED") of the Company who resigned on 6 March 2017;
  - (5) **Mr Chang Tat Joel** ("Mr TJ Chang"), a former NED of the Company who resigned on 24 January 2017;
  - (6) **Mr Lu Hong Da** ("Mr Lu"), a former independent non-executive director ("INED") of the Company who resigned on 24 January 2017;
  - (7) **Mr Miu Hon Kit** ("Mr Miu"), an INED of the Company; and
  - (8) **Mr Wang Hai Sheng** ("Mr Wang"), a former INED of the Company who resigned on 13 April 2017,

for failing to:

- (a) take reasonable steps to establish and maintain an effective and appropriate internal control procedure and risk management system as well as to apply such degree of skill, care and diligence required and expected of them, in breach of LR3.08(f); and
- (b) comply with the Director's Declaration and Undertaking given to the Exchange in the form set out in Appendix 5 Form B to the LR ("Undertaking") to use their best endeavours to procure the Company's LR compliance and comply with the LR to the best of their abilities.

(Mr Liu, Mr HN Chang, Dr Ma, Mr TJ Chang, Mr Lu, Mr Miu and Mr Wang are collectively referred to as "Directors".

Dr Ma, Mr TJ Chang, Mr Lu, Mr Miu and Mr Wang are collectively referred to as "Relevant Directors".)

On 7 November 2017, the Listing Committee conducted a hearing into the conduct of the Company under the LR and the Directors in relation to their obligations under the LR and their respective Undertakings.

On 15 May 2018, the Review Committee (the “Review Committee”) conducted a disciplinary (review) hearing on the applications by the Relevant Directors for a review of the decisions of and the sanctions imposed by the Listing Committee at first instance (the “Disciplinary (Review) Hearing”).

On 21 January 2019, the Listing Appeals Committee (the “Appeals Committee”) conducted a review hearing on the applications by the Relevant Directors for a further review of the decisions of and the sanctions imposed by the Listing Committee as endorsed by the Review Committee.

## **FACTS**

From 26 November 2014 to 15 March 2016, the Group’s Chief Operating Officer (“COO”) and Financial Controller (“FC”) (who were not directors of the Company) had, without the Company’s knowledge or approval, authorised the Company and its subsidiaries (“Group”) to issue approximately RMB1.523 billion of loans and advances (which were interest free, unsecured, with no fixed term of repayment) to Zhongke Hengyuan Technology Co Limited and its subsidiaries (“Pre-March Loans & Advances”).

On 15 March 2016, the Company’s auditors informed the Company’s board of directors (the “Board”) of the Pre-March Loans & Advances. The Pre-March Loans & Advances constituted (a) a disclosable transaction; (b) an advance to an entity; and (c) a major transaction under the LR, which were subject to disclosure and/or shareholders’ approval. The FC was told to cease all further loans and advances.

Despite the instruction to cease all further loan and advances, the COO and FC continued, from 18 March 2016 to 11 May 2016, to issue to Zhongke Group further loans and advances totaling to RMB84.72 million without the Company’s knowledge or approval (“Post-March Loans & Advances”). The Post-March Loans & Advances were also subject to disclosure and shareholders’ approval.

The Company disclosed the Pre-March Loans & Advances and the Post-March Loans & Advances (collectively, “Loans & Advances”) in an announcement dated 13 December 2016, in which the Company acknowledged that due to an inadvertent oversight the Company had not complied with the relevant requirements under Chapters 13 and 14 of the LR. Despite the said announcement, shareholders’ approval has not been obtained for the Loans & Advances.

The Company submitted that it believed the COO and FC had limited knowledge of the LR and they were not aware of the LR implications when the Loans & Advances were made, despite a copy of Chapters 13 and 14 of the LR having been provided to the COO and FC, for their reference and attention at the time of them joining the Group. The Company further admitted that it had no written internal control procedures for (a) the approval and disclosure of contracts; (b) reporting and recording of contracts/loans and advances; (c) management, use and storage of its chops/seals; and (d) remittance of large amount of funds via internet banking (collectively, “Internal Control Deficiencies”).

Mr Liu, Mr HN Chang, Dr Ma and Mr TJ Chang submitted that the Company had significant amount of accounts receivables and accounts payable due to the nature of the business of the Group which were subject to high degree of fluctuations. The Loans & Advances were booked as “*other receivables*” in the management accounts and no breakdown was provided when it was presented to the Board, thus they were not detected.

Mr Lu, Mr Miu and Mr Wang submitted that the Loans & Advances were recorded as “*other receivables*” in the Group’s management accounts but no breakdown was provided during the Audit Committee meetings.

The Company was unable to publish/dispatch its (a) annual report and annual results for the financial year ending 31 December 2015; and (b) interim results for the six months ending 30 June 2016 (collectively, “Financial Reports”) within the timeframe specified under the LR for the reason that it was still preparing the supporting documents to the management accounts of certain subsidiaries of the Company. The Financial Reports were ultimately published/despached within 3 to 8 months after the deadline as specified under the LR to publish/despatch the same had expired.

## 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:-

(1) **Company breached LR13.13, 13.15, 13.46(2)(a), 13.49(1), 13.49(6), 14.34, 14.40 and 14.41 for the reasons that:**

- (a) As admitted by the Company, it had failed to disclose at the relevant time and/or obtain shareholders’ approval for the Loans & Advances which constituted (i) a disclosable transaction; (ii) an advance to an entity; and (iii) a major transaction under LR13.13, 13.15, 14.34, 14.40 and 14.41; and
- (b) The Company had failed to publish and/or despatch the Financial Reports within the time specified under LR13.46(2)(a), 13.49(1) and 13.49(6) as it was unable to, among other things, provide to its auditors the supporting documents to the management accounts of certain subsidiaries of the Company at the relevant time.

(2) **Company did not have, at the material time, adequate internal controls and risk management systems for the reasons that:**

- (a) As admitted by the Company, it had no written internal control procedures with respect to the matters constituting the Internal Control Deficiencies; and
- (b) The COO and the FC were given very significant authority and control over the Group’s operations which allowed the COO and the FC to issue the Loans & Advances without the Board’s knowledge or approval. In particular, the FC was able to authorise internet banking remittances of up to RMB 800 million on his own.

**(3) Directors breached LR3.08(f) and the Undertaking for the reasons that:**

- (a) The Directors are, collectively and individually, responsible for ensuring that the Company establishes and maintains appropriate and effective risk management and internal control systems. In addition, the Audit Committee's terms of reference specify that the INEDs are responsible for overseeing the Company's internal control systems and discuss the risk management and internal controls with management to ensure that management has provided adequate training to the Company's staff. Accordingly, the Directors failed to ensure the Company had established and maintained effective and appropriate (i) internal control procedures, particularly when, the Company admitted to the Internal Control Deficiencies; and (ii) risk management systems particularly when the COO and the FC were given immense power over the Group's operations and funds;
- (b) Rule 3.08 permitted delegation of functions by the Directors but the delegation did not absolve the Directors from their responsibilities or from applying the required levels of skill, care and diligence. The Directors would not satisfy these required levels if they paid attention to the Company's affairs only at formal meetings. They must apply a suitably greater level of scrutiny and follow up on anything untoward that came to their attention;
- (c) The Directors failed to ensure the Company's staff (including the COO and the FC) had received adequate and appropriate training with respect to the LR. The provision of the relevant chapters of the LR to each of the Company's staff (including the COO and the FC) at the time of them joining the Group, without explanation or training, is inadequate. Regular training should be provided to the Company's staff with respect to the LR that is relevant to their duties/responsibilities within the Group;
- (d) The Directors failed to comply with the Undertaking to use their best endeavours to procure the Company's LR compliance and comply with the LR to the best of their abilities in relation to the Company's breaches with respect to the Loans & Advances and the failure to publish and/or dispatch the Financial Reports within the time specified under the LR;
- (e) The Company's previous auditors' resignation at the said time was due to, among other things, unresolved issues and outstanding matters regarding the audit for the annual results. The Directors collectively did not take sufficient or effective steps to respond to these issues, which ultimately led to LR breach with respect to the publication of Financial Reports; and
- (f) In addition to the above, after the Board became fully aware of the Pre-March Loans & Advances on 15 March 2016, the Directors failed to take sufficient or effective action to stop the COO and the FC from authorising further loans and advances. Considering the unusual circumstances, the Directors should have taken pro-active action with heightened awareness to ensure no further breaches of the LR. Simply asking the COO and the FC to stop making further loans was, in the opinion of the Review Committee, inadequate when taking account of the severity of the prior breaches.

At the Disciplinary (Review) Hearing, the Review Committee upheld the decision of the Listing Committee at first instance in respect of the Relevant Directors. The board of directors of a listed company is collectively responsible for the management and operations of the company. The delegation of responsibility did not absolve the Relevant Directors from their responsibilities.

The Appeals Committee upheld the decision of the Review Committee, concluding that the Relevant Directors failed to take effective measures to prevent the recurrence of breaches of the LR by the Company.

## REGULATORY CONCERNS

The Listing Committee regards the breaches in this matter as serious. The LR have been made in furtherance of the Exchange's principal function to provide a fair, orderly and efficient market for the trading of securities. They are in particular, among other things, designed to ensure that investors have and can maintain confidence in the market and that investors and the public are kept fully informed by the Company. They contain continuing obligations with which an issuer must comply including details that are required to be disclosed in respect of certain transactions and whether a circular and shareholders' approval are required. The requirements of LR13.13, 13.15, 13.46(2)(a), 13.49(1), 13.49(6), 14.34, 14.40 and 14.41 are aimed at achieving this purpose and form part of these obligations. However, the Company had failed to meet these requirements.

More specifically:

- (1) The Loans & Advances were of a substantial amount and had exposed the Company to significant financial risks particularly when the Company appeared to have negative cash flow at the time. However, the market was not informed of the risks on a timely basis by announcements and the shareholders were neither provided with circulars providing details of the risks nor given the opportunity to vote at any meeting on whether the Company should accept such risks;
- (2) It is important that issuers publish their financial information in accordance with the timeframe under the LR. However, the Company did not publish the Financial Reports for 3 to 8 months after the deadline specified in the LR; and
- (3) The Company admitted it did not have internal controls concerning the Internal Control Deficiencies. However, the Company had disclosed in its annual report for the year ending 31 December 2015 that its internal controls system was "*adequate and effective*".

## SANCTION

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

### CENSURE:

- (1) The Company for its breach of LR13.13, 13.15, 13.46(2)(a), 13.49(1), 13.49(6), 14.34, 14.40 and 14.41; and

(2) The Directors for their breach of LR3.08(f) and their respective Undertakings.

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

#### **REVIEW BY THE LISTING APPEALS COMMITTEE**

The Relevant Directors applied for a further review to the Appeals Committee of the decisions of and sanctions imposed on them by the Listing Committee as endorsed by the Review Committee.

The Appeals Committee having considered:

- (i) the written submissions made by Dr Ma and Mr TJ Chang and the oral submissions made by Mr TJ Chang on behalf of himself and Dr Ma;
- (ii) the written submissions made by Mr Miu, Mr Wang and Mr Lu and oral submissions made by Mr Miu on behalf of himself, Mr Wang and Mr Lu; and
- (iii) the written and oral submissions made by the Listing Department;

unanimously determined to uphold the decisions of and sanctions imposed on the Relevant Directors by the Listing Committee as endorsed by the Review Committee, on the basis that each of the Relevant Directors:

- (a) breached Rule 3.08(f); and
- (b) breached their respective Undertakings for failing to comply with the LR to the best of their ability and failing to use their best endeavours to procure the Company's LR compliance.

The Appeals Committee has thoroughly considered all the facts including the circumstances in which the Relevant Directors placed (or misplaced) their trust in their fellow directors and senior managers within the Company. The Appeals Committee concluded that the Relevant Directors failed to take effective measures to prevent the recurrence of breaches of the LR by the Company.

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

Hong Kong, 13 May 2020