

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)

## STATEMENT OF DISCIPLINARY ACTION

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Exchange's Disciplinary Action against Hsin Chong Group Holdings Limited (delisted, previous Stock Code: 404) and its former Directors

### SANCTIONS

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

#### CENSURES:

- (1) **Hsin Chong Group Holdings Limited (delisted)** (previous stock code: 404) (**Company**, together with its subsidiaries, **Group**); and
- (2) **Mr Zhou Wei (Mr Zhou)**, former executive director (**ED**) of the Company;

#### CRITICISES:

- (3) **Mr Joseph Kin Hung Choi (Mr Choi)**, former ED and chief executive officer of the Company;
- (4) **Mr Wilfred Shek Chun Wu (Mr Wu)**, former ED of the Company;
- (5) **Mr Lin Zhuo Yan (Mr ZY Lin)**, former NED and non-executive chairman of the Company;
- (6) **Mr Chen Lei (Mr Chen)**, former NED of the Company;
- (7) **Mr Yan Jie (Mr Yan)**, former NED of the Company; and
- (8) **Mr Chui Kwong Kau (Mr Chui)**, former NED and AC member of the Company.

(The directors identified at (2) to (8) above are collectively referred to as the **Directors**.)

**AND STATES** that:

by reason of Mr Zhou's wilful failure to discharge his responsibilities under the Exchange Listing Rules, had he remained in office and the Company remained listed, his retention of office would have been prejudicial to the interests of investors.

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The Listing Committee **DIRECTS**:

- (1) Mr Chui to attend, within 90 days, 20 hours of training on regulatory and legal topics including Listing Rule compliance. The training must include four hours on directors' duties and at least three hours on each of (i) corporate governance; and (ii) Listing Rule requirements in respect of notifiable transactions.
- (2) As a pre-requisite of any future appointment as a director of any company listed or to be listed on the Exchange, each of the Directors (except Mr Zhou and Mr Chui) to attend 20 hours of training on regulatory and legal topics including Listing Rule compliance, including at least three hours on each of (i) directors' duties; (ii) corporate governance; and (iii) Listing Rule requirements in respect of notifiable transactions.

## **SUMMARY OF FACTS**

### **Discloseable and Connected Transactions**

Between August and December 2016, the Company entered into a series of transactions (collectively, the Loans and the Sale and Leaseback Agreement (as defined below), **Transactions**) pursuant to which:

- a) the Company entered into a sale and leaseback agreement to acquire two properties for RMB500 million from a related company of Mr Zhou and paid RMB129 million as the first instalment for the acquisition (**Sale and Leaseback Agreement**);
- b) the Company entered into a renovation cooperation agreement with another related company of Mr Zhou to renovate the properties and agreed to pay RMB247.5 million as consideration for renovation services; and
- c) both agreements were subsequently terminated and the two sums were each treated as loans (**Loans**) made to the related companies of Mr Zhou.

The Transactions constituted discloseable and connected transactions and the Company did not comply with the relevant reporting, announcement, circular and shareholders' approval requirements. The Transactions were not announced until 31 March 2017. As at 31 December 2019 (the date of delisting of the Company), the Company had not despatched a circular to its shareholders.

There was no commercial rationale for the Sale and Leaseback Agreement, which contained, amongst other terms, (i) a leaseback term of 8 years where Mr Zhou's related company would lease the properties from the Group for an aggregate rental consideration of RMB203.5 million (despite the purchase price of RMB500 million), and (ii) a buy-back provision where the Group would be contractually obliged to transfer the properties back to Mr Zhou's related company for a consideration of RMB100 upon expiry of the 8-year lease term.

Mr Zhou was the sole approver of the Transactions but did not notify the Board, seek Board approval or disclose his personal interests in the Transactions prior to the Company entering into the Transactions. The other Directors said they were not aware of the Transactions until the Transactions were discovered by the Company's auditors in the course of preparing the annual results for the year ended 31 December 2016 (**2016 Annual Results**). The Transactions were raised as an audit issue and the annual reports for the years ended 31 December 2016 and 2017 (**2016 and 2017 Annual Reports**) were consequently subject to disclaimer opinions.

The Loans remained outstanding as at 23 March 2018 (the date of the 2017 Annual Report).

### **Delays in Financial Reporting**

The Company failed to timely publish and/or despatch the 2016 Annual Results and 2017 Annual Report in accordance with the Rules, with respective delays of 18 days and 17 days.

### **Internal Control Deficiencies**

The Company admitted that it had no internal controls in place in relation to, amongst others, financial reporting, Rule compliance in respect of notifiable and connected transactions, approval and reporting of transactions, and avoidance of conflict of interest when it entered into the Transactions. It also acknowledged that the Transactions were not reported to the Board due to the then internal control deficiencies.

### **LISTING RULE REQUIREMENTS**

Rules 13.46(2) and 13.49(1) stipulate the respective timing for the publication or despatch of a listed issuer's preliminary announcement of annual results and its annual reports.

Rules 14.34, 14A.35, 14A.36 and 14A.46 require issuers to comply with the announcement, circular and/or independent shareholder approval requirements for discloseable and connected transactions.

Under Rules 3.08, 3.16 and 13.04, the board is collectively responsible for the Company's management and operations. In particular, Rule 3.08 provides that the directors must, *inter alia*, avoid potential and actual conflict of interest and duty (Rule 3.08(d)) and 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(f)). Rule 3.08(f) highlights the importance of directors taking an active interest in the issuer's affairs and having a general understanding of its business. This includes an obligation that they must follow up anything that comes to their attention.

A director of a listed issuer is under an obligation, 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**), to comply to the best of his/her ability with the Rules and use his/her best endeavours to procure the Company's compliance with the Rules.

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

The Listing Committee found as follows:

- (1) The Company breached:
  - (a) Rules 14.34, 14A.35, 14A.36 and 14A.46 with respect to the Transactions.
  - (b) Rules 13.46(2) and 13.49(1) in respect of its delays in publishing and despatching the 2016 Annual Results and the 2017 Annual Report.
- (2) Mr Zhou breached Rules 3.08(a), (b), (d), (e) and (f) and his Undertakings:
  - (a) Mr Zhou failed to avoid actual conflict of interest.
  - (b) Mr Zhou failed to disclose to the Company his personal interests in the Transactions.
  - (c) Mr Zhou did not act honestly and in good faith in the interests of the Company and its shareholders.
  - (d) Mr Zhou failed to conduct the business of the Company in accordance with the applicable laws, rules and regulations, including the Rules.

- (e) The Listing Committee regarded Mr Zhou's breaches in this matter as serious and considered he wilfully failed to exercise due skill, care and diligence in discharging his director's duties.
- (3) The Directors (except Mr Zhou) breached their duties of skill, care and diligence under Rule 3.08(f) and their Undertakings to comply with the Rules to the best of their ability and to use their best endeavours to procure the Company's compliance with the Listing Rules:
- (a) The Directors failed to take an active interest in the Company's operations and use of its financial assets.
  - (b) The Directors failed to ensure that there were adequate and effective internal controls to safeguard the assets of the Company and with respect to identifying and reporting material transactions and processing significant payments.
  - (c) The Directors failed to ensure that the Company had in place adequate and effective internal controls for Rule compliance with respect to financial reporting or connected and notifiable transactions.
  - (d) Where the Company had asserted certain policies existed, they were not properly implemented and no training was given to the relevant staff.

## **CONCLUSION**

The Listing Committee decided to impose the sanctions and directions set out in this Statement of Disciplinary Action.

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

Hong Kong, 11 April 2022