

STATEMENT OF DISCIPLINARY ACTION

Exchange's Disciplinary Action against Optima Automobile Group Holdings Limited (Stock Code: 8418) and Three Directors

SANCTIONS AND DIRECTIONS

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

CENSURES:

- (1) **Optima Automobile Group Holdings Limited** (Stock Code: 8418) (**Company**);
- (2) **Mr Ang Lay Keong**, executive director (**ED**) of the Company (**Mr Ang**);

AND CRITICISES:

- (3) **Ms Lim Li Ling**, ED of the Company (**Ms Lim**); and
- (4) **Ms Tan Peck Luan**, former ED of the Company (**Ms Tan**).

(The directors identified at (2) to (4) above are collectively referred to as the **Relevant Directors**.)

AND FURTHER DIRECTS:

Each of the Relevant Directors to attend 17 hours of training on regulatory and legal topics and Listing Rule compliance, including at least three hours on each of (i) directors' duties; (ii) the Corporate Governance Code; and (iii) the Listing Rule requirements for accurate and complete disclosure in corporate communications.

SUMMARY OF FACTS

The Company's listing prospectus (**Prospectus**) contained confirmations as to no material adverse changes to its financial position from 31 March 2019 up until the date of the Prospectus of 27 September 2019.

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However, the Company's financial performance had suffered a decline in August and September 2019. The Company also did not prepare monthly management accounts for these two months. In addition, the Company had incurred significantly greater listing expenses than the amount disclosed in the Prospectus. (Disclosed amount: SGD 4.4 million; actual amount: SGD7.9 million – an increase of approximately 80%. As a result, listing expenses accounted for 76% of total IPO proceeds.)

The Company is an after-market automotive service provider in Singapore. Its revenue is primarily derived from three revenue segments: inspection, maintenance and non-insured repair services (**Non-insured Repair Services**), insured repair services (**Insured Repair Services**) and warranty-related business (**Warranty Services**).

On 23 September 2019, the Company submitted its profit and profit forecast memorandum (**Memorandum**) to the Exchange for its listing application. The Memorandum set out the forecast revenue for the financial year ended 31 December 2019 (**FY2019**). Forecast revenue growth in FY2019 compared to FY2018 was 14.4%, 46.2% and 32.6%, respectively for Non-insured Repair Services, Insured Repair Services and Warranty Services.

On 11 October 2019, the Company was listed on GEM. The Prospectus contained confirmations by the Relevant Directors that, save for listing expenses, there had been no material adverse change in the financial or trading position or prospect of the Group since 31 March 2019 and up to the date of the Prospectus (**No Material Adverse Change Confirmations**). According to the Company, the latest financial information available to the Relevant Directors as at the date of the Prospectus was the unaudited management accounts for the seven months ended 31 July 2019 (**7M2019 Accounts**).

On 25 March 2020, six months after listing, the Company reported a net loss of approximately SGD2.2 million in its FY2019 annual results (**2019 Annual Results**). The losses were primarily attributable to the Company's deteriorating financial performance arising from certain events (**Material Changes**) which occurred prior to the listing, and listing expenses which were incurred at the time of or after the listing.

The Material Changes in the Company's financial performance

The financial performance of the Company had deteriorated since August 2019.

Non-insured Repair Services saw a decline of average servicing fee from SGD548 for the seven months ended 31 July 2019 (**7M2019**) to SGD248 for the two months ended 30 September 2019, partly attributable to a one-off promotional event which commenced in August 2019.

Insured Repair Services suffered a decline in average servicing fee per job from SGD5,718 for 7M2019 to SGD5,291 for the two months ended 30 September 2019. The 7M2019 Accounts, which were available in August 2019, indicated a significant shortfall compared to the forecast revenue.

With respect to Warranty Services, warranty sales figures for each of July, August and September 2019 were 608,395 and 147 warranties, respectively. The warranty sales figures reflected a steady decline compared to the forecast monthly sales of 600 warranties from July to December 2019. The Company attributed the decline to the unexpected restructuring of Customer F, who was disclosed in the Prospectus to be an important customer relied upon by the Company for its warranty business. The warranty sales figures for August 2019 were available by September 2019 but obtained by the Company only in October 2019, after the date of the Prospectus.

The Relevant Directors did not take steps to follow up or obtain further information with respect to the Material Changes.

In addition, the Company did not prepare monthly management accounts for August and September 2019. The Relevant Directors explained that this was because of a lack of resources in time and manpower, and they deemed the exercise redundant given quarterly reporting would suffice after the listing. They mainly relied on the 7M2019 Accounts to ensure the accuracy and completeness of the disclosures in the Prospectus.

Listing Expenses

Contrary to the estimated listing expenses of SGD4.4 million disclosed in the Prospectus, the Company's actual listing expenses were SGD7.9 million, representing an increase of approximately 80%. The increase in listing expenses comprised primarily an underwriter's bonus and a consultant's fee, which were incurred at around the time of listing.

The underwriter's bonus amounted to HK\$7.2 million, representing 12% of the total IPO proceeds. The bonus was paid to Aristo Securities Limited (**Aristo**), one of the Company's joint underwriters involved in the listing since 16 September 2019. According to the Division's investigation, the amount of the bonus was proposed by Aristo to Mr Ang without any calculable basis. The invoice issued by Aristo for its professional services did not contain an itemized breakdown of the work or hours expended by Aristo.

In addition, a consultancy fee amounting to SGD0.7 million (equivalent to approximately HK\$4.0 million) was paid to Mr Chong Soo Hoon (**Mr Chong**) for his contribution to the listing process as a consultant. Mr Chong was disclosed in the Prospectus to be a pre-IPO investor. The Company explained that Mr Chong had been involved with its listing since the commencement of the listing process, but Mr Chong did not request a fee until after the listing. Similar to Aristo's bonus, Mr Chong had proposed the fee amount to Mr Ang but the agreement and invoice issued by Mr Chong did not contain details of the work conducted or rates charged by Mr Chong.

Role of the Relevant Directors

As the founder and chief executive director of the Company, Mr Ang is responsible for the overall business performance and management of the Company.

Ms Tan was the Company's chief financial officer and executive director at the time of the listing and was responsible for the financial management of the Company.

Ms Lim is an executive director of the Company and the spouse of Mr Ang. She is the administrative director of the Company responsible for administrative matters.

The Relevant Directors were authorised by the Board to deal with matters relating to the listing, including the review of disclosures in the Prospectus. However, with respect to the events giving rise to the Material Changes, and the decision not to follow up on the potential financial impact resulting from these events, Mr Ang was the primary decision-maker. Ms Tan and Ms Lim had relied on Mr Ang's business experience to make the relevant decisions. For example, when the 7M2019 Accounts were available in August 2019, Ms Tan had presented Mr Ang with the figures and raised the potential difficulty in achieving the forecast revenue of the Insured Repair Services segment. Mr Ang had expressed confidence in achieving the target revenue based on his professional experience in the automotive industry.

Furthermore, Mr Ang was the sole decision-maker with respect to the bonus paid to Aristo and the consultancy fee paid to Mr Chong. Both Aristo and Mr Chong had, respectively, proposed the bonus and the consultancy fee to Mr Ang. Mr Ang did not involve other directors in his decision-making process when he agreed to their proposal.

GEM LISTING RULE REQUIREMENTS

GLR 14.08(7)(a) requires a listing document to contain such information and particulars which is necessary to enable an investor to make an informed assessment of the activities, profits and losses, assets and liabilities, financial position, management and prospects of the issuer.

GLR 17.56(2) requires that information contained in a listing document must be accurate and complete in all material respects and not be misleading or deceptive.

The Exchange's Guidance Letters 86-16 (last updated in January 2022) and 98-18 (updated in August 2022) provide guidance on, amongst other things, what information the Exchange typically expects to be included in a listing document and how listing documents should be produced which fulfil the general principles of the Rules. Such expectation includes disclosing, in the "Summary" and "Financial Information" sections, material adverse changes to a listing applicant's financial and/or trading position after the trading record period in its listing document (see paragraphs 31 to 35 of Guidance Letter 98-18).

Under GLR 5.01, the board is collectively responsible for the Company's management and operations. The directors, both collectively and individually, are expected 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. Specifically, directors must act honestly and in good faith in the interests of the company as a whole (GLR 5.01(1)), act for proper purpose (GLR 5.01(2)), be answerable to the issuer for the application or misapplication of its assets (GLR 5.01(3)), 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 (GLR 5.01(6)).

Pursuant to the Declaration and Undertaking with regard to Directors (**Undertaking**) in the form set out in Appendix 6A to the GLRs, an issuer's director is under an obligation to comply to the best of his/her ability with the GLRs and use his/her best endeavours to procure the Company's compliance with the GLRs.

ACCEPTANCE OF SANCTIONS AND DIRECTIONS

The Company and the Relevant Directors have admitted their respective breaches and agreed with the Exchange to accept the sanctions and directions to be imposed on them by the Listing Committee, as set out in this statement.

LISTING COMMITTEE'S FINDINGS OF BREACH

The Listing Committee found as follows:

The Company

- (1) The Material Changes had resulted in a decline in the Company's financial performance for the months of August and September 2019. They constituted adverse changes in the Company's financial performance after the trading record period of 31 March 2019, and represented a deviation from the position in the Company's profit forecast submitted to the Exchange and disclosed in the Prospectus to the investing public at listing.
- (2) As the Material Changes occurred in August and September 2019, prior to the date of the Prospectus, the events should have been disclosed in the Prospectus. However, the Company failed to do so.
- (3) Not only did the Company fail to make the disclosures referred to in (2) above, it included in the Prospectus the No Material Adverse Change Confirmations which covered the period from 31 March 2019 up to 27 September 2019. The latest financial information available to the Company before the listing was the 7M2019 Accounts because the Company did not prepare monthly management accounts for August and September 2019. The said confirmations in the Prospectus were therefore made on the basis of inaccurate and incomplete information.
- (4) The Company accordingly breached GLRs 14.08(7) and 17.56(2) in respect of its failure to disclose the Material Changes in the Prospectus.

The Relevant Directors

- (5) Each of the Relevant Directors either knew about the financial impact of the Material Changes, or should reasonably have known about it had they taken steps to obtain the most updated financial information of the Company before the listing.
 - (a) There were red flags in respect of at least the Insured Repair Services and the Warranty Services segments as set out above, which would have prompted follow-up and monitoring.
 - (b) With respect to the Insured Repair Services segment, the profit forecast had presented the most robust revenue growth for this segment. Ms Tan had raised an alert to Mr Ang when she received the 7M2019 Accounts. The Relevant Directors were therefore aware of the potential difficulty in achieving the forecast revenue. However, Mr Ang decided that no follow up steps needed to be taken, and the Relevant Directors failed to follow up to ascertain whether the forecasted figures could be or had been met.
 - (c) Despite the importance of Customer F to the Company's business, they failed to monitor Customer F's warranty sales of August and September 2019.

- (6) Not only did they fail to obtain the latest financial information, the Relevant Directors decided not to prepare the Company's monthly management accounts for the months of August and September 2019. Their explanations for so doing (lack of time and resources and redundancy of the exercise) were not valid reasons for not obtaining the most up-to-date financial information of the Company.
- (7) Given the proximity of the events to the listing, the Relevant Directors had access to a variety of professional advisors, but they failed to seek any advice with respect to the Rule implications arising from the Material Changes and the failure to prepare monthly management accounts for August and September 2019, and instead relied on their own judgement and experience. Their actions led to the Company's Rule breaches.
- (8) The listing expenses incurred with respect to Aristo's bonus and Mr Chong's fees represented a significant proportion of the Company's total IPO proceeds. Despite the substantial amounts involved, Mr Ang did not involve the professional advisors, including the sponsor, or the other directors, including the independent non-executive directors, in the discussion or consideration of the payments. Mr Ang failed to act in the best interests of the Company and to protect the Company's assets.
- (9) In particular, Mr Ang could not provide a satisfactory explanation for agreeing to pay such large amounts for the bonus and consultancy fee. The proposed amounts appear to be arbitrary numbers without a calculable basis given the lack of itemized bills detailing the services performed by Aristo or Mr Chong. Mr Ang did not make enquiries with or obtain more information from Aristo or Mr Chong on the bases for the proposed amounts.
- (10) The Relevant Directors therefore breached their duties under GLR5.01 and their obligations under their Undertaking, including failing to use their best endeavours to procure the Company's Rule compliance.

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 Relevant Directors, and not to any other past or present directors of the Company.

Hong Kong, 27 June 2023