

STATEMENT OF DISCIPLINARY ACTION

Exchange's Disciplinary Action against Seven Former Directors of Huiyin Holdings Group Limited (Stock Code: 1178)

Under Rule 3.08, the Exchange expects directors, both collectively and individually, to fulfill fiduciary duties and duties of skill, care and diligence. In this case, the executive directors failed individually to take adequate steps to ensure that the relevant documentation for certain acquired entities was obtained or retained. The relevant directors (both executive and non-executive) except one failed collectively to establish adequate internal controls in the listed issuer to obtain or retain the said documentation.

The failure has resulted in an audit disclaimer in respect of the acquired entities after about one year of their acquisition, as well as a subsequent impairment of a significant amount on the acquired entities. The Exchange views the performance of directors' duties seriously and has decided to take action against those who failed in such duties.

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

CENSURES:

- (1) **Mr Chan Shun Yee (Mr Chan)**, a former executive director (**ED**) of Huiyin Holdings Group Limited (**Company**) (Stock Code: 1178);
- (2) **Mr Liu Min (Mr Liu)**, a former ED of the Company;
- (3) **Mr Xu Zhifeng (Mr Xu)**, a former ED of the Company;
- (4) **Ms Zhu Yanzhou (Ms Zhu)**, a former independent non-executive director (**INED**) of the Company;
- (5) **Mr Wong Tat Yan Paul (Mr Wong)**, a former INED of the Company

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AND CRITICISES:

(6) **Mr Zhou Guohua (Mr Zhou)**, a former ED of the Company; and

(7) **Mr Su Rujia (Mr Su)**, a former INED of the Company

((1) to (7) collectively **Relevant Directors**), for failing to perform their directors' duties, in breach of Rule 3.08(f) of the Rules Governing the Listing of Securities on the Exchange (**Listing Rules**) and their obligations under the Declaration and Undertaking given to the Exchange in the form set out in Appendix 5B to the Listing Rules (**Undertaking**).

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

HEARING

On 14 October 2020, the Listing Committee conducted a hearing into the conduct of the Relevant Directors in relation to their obligations under the Listing Rules and the Undertaking.

FACTS

The Company announced on 3 May 2016 that it had entered into an acquisition agreement (**Agreement**) on that day to acquire from a vendor (a) 100 per cent equity interest in ECrent (Hong Kong) Limited (**ECrent**); and (b) 407,106 shares in YSK 1860 Investment Company Limited (**YSK**), at a consideration of \$122,628,579 (collectively, **Acquisition**).

According to the Agreement:

- (a) the vendor guaranteed that if YSK's related company could not get listed on the Nasdaq within one year after completion of the Acquisition, the Company had the right to request the vendor to repurchase the shares of YSK (**Redemption Right**); and
- (b) the ultimate beneficial owner of the vendor would execute a personal guarantee in relation to, among other things, the Redemption Right (**Clause**).

The Company announced on 12 August 2016 that all the conditions precedent had been fulfilled and completion of the Acquisition had taken place on that day.

Auditors' opinion

The Company's auditors gave a disclaimer opinion in respect of the Company's annual results for the year ended 30 June 2017 (**Disclaimer**) on the following basis:

- (a) The Company could not provide or obtain the books and records (ie accounting records, financial information, original vouchers and related contracts) from ECrent (**Documentation Issue A**) and was unable to exercise control over ECrent;
- (b) The Disclaimer related to whether any provision for impairment loss was necessary for the carrying amount of the acquisition in ECrent (approximately \$96 million);
- (c) The Company could not provide or obtain appropriate evidence (eg relevant share certificate) to verify the ownership of its interest in YSK (**Documentation Issue B**); and
- (d) The Disclaimer related to whether the carrying amount of the investment in YSK (approximately \$14 million) would be free from material misstatement.

Investigator's findings

In September 2017, the Company formed a special investigation committee which engaged a professional firm (**Investigator**) and other professional advisers (being the **Internal Control Adviser** and the **Legal Advisers**) to review, among other things, the Acquisition and Documentation Issues A and B.

According to the Investigator's report dated 31 January 2018:

- (a) there was inadequate documentation relating to due diligence of ECrent and YSK. It seemed that only certain information of ECrent and YSK was obtained; and
- (b) the personal guarantee regarding the Redemption Right could not be located. There was no documentation relating to the waiver of or non-compliance with the Clause.

According to the Company (as announced on 21 March 2018), due to certain limitations (including it was practically difficult to obtain information from the former directors involved in the Acquisition and that the current directors had no first-hand knowledge of the Acquisition), it had no knowledge as to why the documentation was inadequate and why the Clause was not complied with.

Internal Control Adviser's findings

The Internal Control Adviser's report dated March 2018 contained, among others, the following findings and recommendations:

- (a) In relation to the Disclaimer, it was recommended that the Company establish formal procedures to take control over its newly acquired subsidiaries (including ECrent) such as:
 - (i) obtaining the board minutes and statutory documents of its newly acquired subsidiaries as soon as practicable after the acquisition;
 - (ii) keeping copies of material board minutes and statutory documents of its newly acquired subsidiaries in the Company's company secretary department; and
 - (iii) ensuring the share transfer instrument is completed and all statutory documents have been updated with the government or related governing bodies.
- (b) The Company did not have written comprehensive investment policy and procedures.

The Company announced the findings of the Investigator and the Internal Control Adviser on 21 March 2018.

The Company's annual results for the year ended 30 June 2018 (FY2018 Results)

The Company made an impairment of the full amount of the Acquisition (being \$110 million) in the FY2018 Results, after taking into account the Investigator's findings and that there were then no concrete plans to recover the investments.

LISTING RULE REQUIREMENTS

Under Rule 3.08, the board of directors of an issuer is collectively responsible for its management and operations, and the directors are collectively and individually responsible for ensuring its compliance with the Listing Rules. Rule 3.08(f) requires that every director must 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.

A director of an issuer is under an obligation, pursuant to his/her Undertaking, to, among other things:

- (a) comply to the best of his/her ability with the Listing Rules (**Best Ability Undertaking**); and
- (b) cooperate with the Exchange's investigation (**Cooperation Undertaking**).

LISTING COMMITTEE'S FINDINGS OF BREACH

The Listing Committee considered the written and/or oral submissions of the Listing Division (**Division**) and the Relevant Directors, and concluded as follows:

All Relevant Directors (except Mr Zhou) – breach of Rule 3.08(f)

The Listing Committee found that all Relevant Directors (except Mr Zhou who became a director of the Company shortly before the purported completion of the Acquisition) failed to establish adequate internal controls in the Company to obtain / retain the relevant documentation in respect of the Acquisition; therefore, they were in breach of Rule 3.08(f) of the Listing Rules:

- (a) The Disclaimer was due to the unavailability of the relevant books and records in respect of ECrent and lack of appropriate evidence to verify the ownership in respect of YSK (ie Documentation Issue A and Documentation Issue B mentioned above).
- (b) The Investigator highlighted that there was inadequate documentation on due diligence of ECrent and YSK and that certain key documents (eg the personal guarantee in relation to the Redemption Right) could not be found.
- (c) The fact that the Company could not itself explain the various issues citing certain limitations reflected the inadequacies of its internal controls.
- (d) The Internal Control Adviser highlighted that the Company did not have formal procedures to take control over the newly acquired subsidiaries. There also did not seem to have proper procedures in place at or around the time of the Acquisition to ensure that all relevant documents were obtained / retained.
- (e) All the Relevant Directors had the duty to establish, or ensure the Company establish, adequate and effective internal controls in the Company. One of the primary duties of the Company's Audit Committee (consisting of the INEDs) was to review and supervise the financial process and internal controls of the Company.

- (f) Given the size of the Acquisition, Mr Wong (being the chairman of the Company's Audit Committee at the relevant time and an experienced professional) failed to take adequate steps to ensure the effectiveness of the internal controls in the Company regarding obtaining / retention of the relevant documentation in respect of the Acquisition.

Mr Chan, Mr Xu, Mr Liu and Mr Zhou – further breach of Rule 3.08(f)

The Listing Committee also found that Mr Chan, Mr Xu, Mr Liu and Mr Zhou further breached Rule 3.08(f) due to the fact that:

- (a) they had an executive role in the Company;
- (b) they (except Mr Zhou) were all in office at or around the time of the Acquisition, including the approval of the Acquisition Agreement and the issue of the Company's announcements of 3 May and 12 August 2016 about the Acquisition and its completion respectively;
- (c) Mr Zhou was in office when the Company's announcement of 12 August 2016 (of which he approved) was made;
- (d) they had knowledge of the Acquisition; and
- (e) they failed to take adequate steps to ensure that the relevant documentation for the acquired entities was obtained / retained.

Mr Chan:

- (a) was appointed as an ED of the Company on 27 April 2015, having significant experience in management and restructuring for the 18 years before his appointment. He was further appointed as a director of ECrent on 12 August 2016 responsible for supervising the operation of ECrent;
- (b) was actively involved in the negotiation of the Acquisition with the vendor. He signed the memorandum of understanding on 25 April 2016 in respect of the proposed Acquisition and attended internal and external meetings in relation to the Acquisition; and
- (c) attended the two board meetings on 3 May and 12 August 2016 (**Two Board Meetings**) for the approval of the Agreement and the issue of the Company's announcements of 3 May and 12 August 2016.

Mr Xu:

- (a) was appointed as an ED of the Company on 14 May 2015, having significant experience in internal management, risk control, integration between corporates and restructuring. He was mainly responsible for the Company's business in China including developing the market and looking for potential investors. He was further appointed as a director of ECrent on 12 August 2016 responsible for managing and exercising control over ECrent;
- (b) introduced the proposed Acquisition to the Company. He was actively involved in the negotiation of the Acquisition with the vendor, as well as the signing of the Agreement and three supplemental agreements; and
- (c) chaired the Two Board Meetings.

Mr Liu:

- (a) was appointed as an ED of the Company on 27 April 2015, possessing strong skills and experience in the management and operations of financial institutions. He attended the Two Board meetings. (Mr Liu however did not cooperate with the Exchange's investigation (see below)).

Mr Zhou:

- (a) was appointed as an ED of the Company on 8 August 2016, being experienced in management and operation of companies listed in Hong Kong and China. He was mainly responsible for assisting the Company to enter and expand the China market. In June 2017, he became the chairman of the Company as well as a director of ECrent; and
- (b) approved a supplemental agreement entered into on 12 August 2016, as well as the Company's announcement of 12 August 2016. He was informed by Mr Xu that the Acquisition was completed.

In respect of Mr Chan and Mr Xu, the Listing Committee particularly noted that:

- (a) both of them are experienced professionals and had been EDs (of the Company) for a year before the Acquisition;
- (b) they were both involved in the negotiation process in relation to the Acquisition;

- (c) both of them participated in, and Mr Xu chaired, the Two Board Meetings; and
- (d) they were both appointed as directors of ECrent in August 2016 responsible for managing, exercising control over and/or supervising ECrent.

All Relevant Directors – breach of the Best Ability Undertaking

By virtue of their breaches of Rule 3.08(f) as mentioned above, the Listing Committee found that each of the Relevant Directors breached his Best Ability Undertaking.

Mr Liu and Ms Zhu – breach of the Cooperation Undertaking

Mr Liu was a former ED from 27 April 2015 to 1 March 2017 whereas Ms Zhu was a former INED from 23 October 2015 to 14 December 2016. Each of them did not provide a submission in response to the Division's enquiry letter or the subsequent reminder letters.

The Listing Committee noted that the enquiry and reminder letters were sent to each of Mr Liu and Ms Zhu at their respective address last known to the Division (**Address**).

Despite the fact that (a) some letters delivered to the Address were not returned and that all letters (including the final reminders) were delivered successfully by emails; and (b) the Division succeeded in speaking to Mr Liu and Ms Zhu who were made aware of the Division's investigation, both Mr Liu and Ms Zhu did not provide a submission in response to the Division's enquiry letter.

In light of the above, the Listing Committee found that Mr Liu and Ms Zhu also breached the Cooperation Undertaking.

REGULATORY CONCERN

The Listing Committee considered the breaches in this case serious:

- (a) the Company was not in a position to confirm with any certainty whether or not the Acquisition was actually completed;
- (b) the Disclaimer as a result of Documentation Issues A and B occurred in the first year of the Acquisition;

- (c) the total amount written-off in respect of the Acquisition of \$110 million had a significant impact on the Company's FY2018 Results, as it wiped out the Company's revenue of \$47 million and gross profit of \$11 million, and constituted approximately 65 per cent of the Company's total loss of \$168 million, for the year; and
- (d) the Company could not itself explain the various issues.

SANCTIONS

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

- (a) Public censure against Mr Chan, Mr Xu and Mr Wong for their respective breach of Rule 3.08(f) and the Best Ability Undertaking;
- (b) Public censure against Mr Liu and Ms Zhu for their respective breach of (i) Rule 3.08(f); (ii) the Best Ability Undertaking; and (ii) the Cooperation Undertaking;
- (c) Public statement involving criticism against Mr Zhou and Mr Su for their respective breach of Rule 3.08(f) and the Best Ability Undertaking; and
- (d) Mr Wong (having current directorship in another issuer listed on the Exchange) to attend 16 hours of training on Listing Rule compliance, including at least three hours of training on director's duties, to be provided by training providers approved by the Division. The training is to be completed within 90 days from the publication of this statement; and the training provider's written certification of full compliance is to be provided to the Division within two weeks after training completion. For each of the other Relevant Directors, as a pre-requisite of any future appointment as a director of any company listed or to be listed on the Exchange, he or she is to attend 16 hours of training on Listing Rule compliance, including at least three hours of training on director's duties, to be provided by training providers approved by the Division, before the effective date of such appointment.

Hong Kong, 17 May 2021