

## STATEMENT OF DISCIPLINARY ACTION

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Exchange's Disciplinary Action against Tech Pro Technology Development Limited (Delisted, Previous Stock Code: 3823) and Seven of its Former Directors

**This case involves public statements that the retention of office by two Directors would have been prejudicial to the interests of investors.**

**Directors have clear duties and responsibilities to safeguard the interests and assets of a listed issuer. Directors must ensure that effective risk management and internal control systems are established, maintained and implemented.**

**In this case, the Directors failed to take appropriate steps to protect and monitor the issuer's investment in a joint venture. There was an over-reliance on a joint venture partner to manage the joint venture. The inaction by all the Directors created an environment for irregularities, which went undetected and resulted in the joint venture's loss of its sub-leasing right which was a substantial asset.**

**The Exchange views director's failure to exercise reasonable care, skill and diligence seriously and will take enforcement action without hesitation.**

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## The Listing Committee of the Exchange (Committee)

### CENSURES:

- (1) **TECH PRO TECHNOLOGY DEVELOPMENT LIMITED** (previous Stock Code: 3823) (the listing of the Company's shares on the Exchange was cancelled with effect from 2 March 2020 under Rule 6.01A) (**Company**) for failing to comply with (a) Rules 13.13, 13.15 and 14.34 of the Rules Governing the Listing of Securities of The Stock Exchange of Hong Kong Limited (**Exchange Listing Rules**) in relation to a transaction which constituted an advance and the provision of financial assistance to an entity; and (b) Rules 13.46(2)(a), 13.48(1), 13.49(1) and 13.49(6) of the Exchange Listing Rules for the delayed publication of three sets of financial results and reports in 2017 and 2018;

### CENSURES:

- (2) **Mr Lee Tsz Hang (Mr Lee)**, a former executive director (**ED**) of the Company;  
 (3) **Mr Liu Xinsheng (Mr Liu)**, a former ED of the Company;  
 (4) **Mr Chiu Chi Hong (Mr Chiu)**, a former ED of the Company;  
 (5) **Mr Li Wing Sang (Mr Li)**, a former ED of the Company;

(together (2) to (5) are defined as the **EDs**)

for failing to perform their directors' duties as required in breach of Rules 3.08(a) and/or (f) of 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 Exchange Listing Rules (**Undertaking**).

## And the Listing Review Committee (the LRC) on review

### CENSURES:

- (6) **Mr Lau Wan Cheung (Mr Lau)**, a former independent non-executive director (**INED**) of the Company;  
 (7) **Mr Ng Wai Hung (Mr Ng)**, a former INED of the Company; and  
 (8) **Mr Tam Tak Wah (Mr Tam)**, a former INED of the Company  
 (together (6) to (8) are defined as the **INEDs**)

for failing to perform their directors' duties as required in breach of Rules 3.08(f) of the Exchange Listing Rules and their obligations under the Undertaking.

For the avoidance of doubt, the Exchange confirms that the sanctions and directions detailed in this Statement of Disciplinary Action apply only to the Company and the EDs and INEDs as identified above and not to any other past or present board members of the Company.

## HEARINGS

On 9 June 2020, the Committee conducted a hearing into the conduct of the Company and the EDs and INEDs in relation to their obligations under the Exchange Listing Rules and the Undertaking.

On 31 March 2021, the LRC conducted a hearing of the review application of the INEDs with respect to the findings of breaches and sanctions imposed by the Committee.

## FACTS

The Company delayed the publication and despatch of three sets of financial results and reports (**Late Accounts**) as summarized below (up to the date of the cancellation of the listing of the Company's shares on the Exchange on 2 March 2020) (**Delisting Date**):

Financial results / report	Period end	Deadline for publication	Publication date	Delay (approx.)	Exchange Listing Rule breached
FY2017 Results	Year ended 31 Dec 2017	31 Mar 2018	-	23 months	13.49(1)
FY2017 Report	Year ended 31 Dec 2017	30 Apr 2018	-	22 months	13.46(2)(a)
1H2018 Results	6 months ended 30 Jun 2018	31 Aug 2018	-	18 months	13.49(6)
1H2018 Report	6 months ended 30 Jun 2018	30 Sep 2018	-	17 months	13.48(1)
FY2018 Results	Year ended 31 Dec 2018	31 Mar 2019	-	11 months	13.49(1)
FY2018 Report	Year ended 31 Dec 2018	30 Apr 2019	-	10 months	13.46(2)(a)

According to the Company's disclosure, the delays were mainly due to the need of its auditors to complete its audit procedures relating to, among other things, the issues in relation to a joint venture (**JV**) and a property (**Property**) located in Shanghai, People's Republic of China (**PRC**).

As at the Delisting Date, the Company had not yet published the Late Accounts. Trading of the Company's shares had been suspended since 9 November 2017.

### **Acquisition of the JV**

The JV's principal business was to lease the Property from a lessor (**Lessor**) and sub-lease it to tenants.

On 24 March 2014, the Company acquired 50 per cent interest in the JV from its owner (**JV Partner**) at a consideration of \$450 million (**Acquisition**). According to the Company's disclosure, the Acquisition was a good investment opportunity as it could diversify the business risks of, and provide a stable income stream to, the Company.

Following the Acquisition, the JV had four directors (two representatives from each partner to the JV) and one supervisor. The directors of the JV were the JV Partner, his associate, Mr Li and a staff member of the Company. The supervisor was Mr Liu.

The JV Partner collected rents of the Property on behalf of the JV before the Acquisition (**Historical Arrangement**). The Historical Arrangement continued after the Acquisition. Further, the JV had also made other payments on behalf of the JV Partner or his affiliates. As at 30 April 2016, the amount owed by the JV Partner to the JV was approximately RMB301 million.

The JV declared an interim dividend of RMB222 million in July 2016 (**Interim Dividend**), and a final dividend of RMB15.6 million in February 2017 (collectively **Dividends**). The Dividends payable to the Company (RMB118.8 million) were withheld within the JV to facilitate an upgrade plan of the Property. The Dividends payable to the JV Partner were applied to offset the amount owed by the JV Partner to the JV, and such set-off arrangements (**Set-off Arrangements**) were ratified by the Company's board on 9 June 2017.

**JV's lawsuit**

The Company's announcement of 9 November 2017 disclosed that:

- (a) the Securities and Futures Commission (**SFC**) issued a direction under Rule 8(1) of the Securities and Futures (Stock Market Listing) Rules to suspend share trading of the Company with effect from 9 November 2017;
- (b) it appeared that the Lessor had instigated a lawsuit (**Lawsuit**) in the PRC against the JV as the JV had failed to pay rents to the Lessor in respect of the Property since March 2016; and
- (c) the JV and the JV Partner had not disclosed any information about the Lawsuit to the Company.

The Company commissioned an independent investigation, the report of which was published on 28 September 2018 (**Independent Investigation Report**).

The Independent Investigation Report disclosed, among other things, the following:

- (a) even though the Company, through Mr Li, had requested the JV Partner on several occasions for the Company to participate in the operations of the JV, the Company was unable to obtain control over the JV as the JV Partner insisted that he would manage and have full control of the JV;
- (b) the Company obtained monthly financial statements, financial particulars and relevant agreements of the JV from the JV once a month. The Company could only monitor the operations of the JV through this information. Information of the JV's daily operations, including the relationships and daily operational dealings between the JV and the Lessor/tenants, was not made available to the Company;
- (c) during its review of the JV's monthly financial statements, the Company became aware that the JV Partner had been receiving rents of the Property payable to the JV – approximately RMB50 million, RMB39 million and RMB34 million in 2014, 2015 and 2016 respectively, which accounted for 62 per cent, 51 per cent and 75 per cent of the total rents receivable by the JV in the respective years;
- (d) the JV Partner was requested by the Company to stop receiving rents on behalf of the JV and return the rents received to the JV, but the JV Partner did not cooperate; and

- (e) there was no evidence showing that the Company was aware of the Lawsuit before receiving the SFC letter.

## **EXCHANGE'S LISTING RULE REQUIREMENTS**

The Exchange Listing Rule requirements in relation to financial reporting are as follows:

- (a) Rules 13.49(1) and 13.46(2)(a) – Distribution of annual results and report not more than three and four months respectively after the corresponding financial year end.
- (b) Rules 13.49(6) and 13.48(1) – Distribution of interim results and report no later than two and three months respectively after the corresponding period end.

In relation to an advance to an entity exceeding 8 per cent under the assets ratio defined under the Exchange Listing Rules, Rules 13.13 and 13.15 require that an issuer announce the relevant details of it.

Rule 14.34 also requires that an issuer publish an announcement in relation to a discloseable transaction defined under the Exchange Listing Rules as soon as possible.

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 Exchange Listing Rules. Rule 3.08(a) requires that every director must, in the performance of his duties as a director, act honestly and in good faith in the interests of the issuer as a whole. Rule 3.08(f) further 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 Undertaking, to comply to the best of his ability with the Exchange Listing Rules and to use his/her best endeavours to procure the Company's compliance with the Exchange Listing Rules.

## **FINDINGS OF BREACH**

The Committee considered the written and/or oral submissions of the Listing Division (**Division**), the Company and the EDs, and the LRC considered the written and/or oral submissions of the Division and the INEDs, and concluded as follows:

**Breach by the Company**

The Committee found that the Company breached Rules 13.13, 13.15, 13.46(2)(a), 13.48(1), 13.49(1), 13.49(6) and 14.34 of the Exchange Listing Rules by reason of the delayed publication of the Late Accounts and late disclosure of the JV's withholding of the Dividends payable to the Company, which constituted an advance and provision of financial assistance.

**Breach by the EDs**

The Committee found that the EDs breached Rule 3.08(f) for failing to take adequate steps or implement effective risk management and internal control procedures to monitor the operations of the JV or safeguard its assets:

- (a) Despite the Company's knowledge about the Historical Arrangement prior to the completion of the Acquisition and the JV Partner's promise to terminate the Historical Arrangement after the Acquisition, the EDs (apart from Mr Lee who joined the Company's board on 1 September 2016) did not, in the light of this knowledge, ensure that the Company took adequate steps to protect its interests immediately following the completion of the Acquisition or during the period of negotiation leading up to completion.
- (b) It appeared that because of the absence of any protective measures being put in place by the Company for the monitoring of the JV's business and operations, the JV Partner was able to continue the Historical Arrangement after the completion (March 2014) up to at least mid-October 2016. During that period, the JV did not receive, and could not distribute to the Company, any cash from the rental payments receivable by the JV. This arrangement went against the Company's intention of having a stable income stream from its investment in the JV despite the fact that the JV's business was supposed to have been performing well.
- (c) The outstanding amounts due from the JV Partner were substantial each year. The Company did not put in place any risk management measures for the JV's recovery of the outstanding amount due from the JV Partner or stop them from increasing.
- (d) The Company had no visibility of the business and operations of the JV apart from its review of the JV's monthly financial statements, which were prepared and provided by the JV Partner.

- (e) The Company's review of the JV's monthly financial statements was ineffective and insufficient. The ability of the Company to verify the purported discontinuation of the Historical Arrangement or any related figures in the JV's financial statements was questionable. The Company was not able to identify the non-payment of rent to the Lessor.
- (f) The EDs placed too much reliance and trust on the JV Partner to run the JV's business. There were inadequate checks and balances in relation to the operations and cash flows of the JV. The inaction by the EDs in this regard was likely to have created an environment whereby there were no means by which the EDs would be able to detect any matters that were negative to the interests of the Company.
- (g) Having considered the nature of the transaction in totality, the Committee was of the view that the EDs failed to take adequate steps to ensure adequate risk management and internal control systems were in place to deal with the JV's cash management.

#### **Mr Li and Mr Liu – Further Breach of Rule 3.08(a)**

The Committee also found that Mr Li and Mr Liu further breached Rule 3.08(a) for failing to act honestly and in good faith in the interests of the Company as a whole. Mr Li and Mr Liu were appointed by the Company as its representatives in the JV to protect the Company's interests. However, they failed to act in the best interests of the Company:

- (a) They did not raise any objection or comments in relation to the JV Partner's proposal about the Dividends arrangements. Given the equal amount of shareholding within the JV, the arrangement was unfair to the Company given that the Company was offering financial assistance to the JV without any interest when the JV Partner was not required to offer the same financial assistance and was allowed to offset his long-standing debt owed to the JV, without payment of any interest.
- (b) They did not fulfil their role as the Company's representatives in the JV given their lack of involvement in the JV's management and operations, and their lack of action taken to address the JV Partner's dominance in the JV for a prolonged period. Their conduct contributed to the Company's failure to detect the non-payment of rent by the JV to the Lessor, which in turn resulted in the Lawsuit and the loss of the JV's sub-leasing right of the Property. The sub-leasing right was a substantial asset of the JV. The Company's investment in the JV was significant and accounted for 30 per cent of the Company's total assets as at 31 December 2016.



**Mr Li and Mr Liu – Persistent failures to discharge their responsibilities**

The Committee considered that, in addition to the breach of duties by Mr Li and Mr Liu as described above, there were persistent failures by Mr Li and Mr Liu to discharge their responsibilities under the Exchange Listing Rules given their specific roles:

- (a) During the negotiation process in respect of the Acquisition, the JV Partner promised Mr Li that he would terminate the Historical Arrangement. However, Mr Li did not take any steps to ensure that the Historical Arrangement was in fact terminated before or immediately after the completion of the Acquisition.
- (b) Mr Li failed to take an active role in the operations or monitoring of the operations of the JV.
- (c) Mr Liu failed to take an active role in his supervisory/monitoring duties in respect of the JV. His knowledge of the JV, including the Historical Arrangement and the Set-off Arrangements, came solely from Mr. Li. This clearly demonstrated that he failed to discharge his duties independently.
- (d) They brought the matter of the Dividends arrangements to the board of the Company and they did not apply their minds to the Exchange Listing Rule compliance when they approved the withholding of the Dividends payable to the Company, which resulted in the Company's breach of Rules 13.13, 13.15 and 14.34.
- (e) Their failure to discharge their duties as described in (a) to (d) above occurred over an extended period of time (at least from March 2014 to November 2017).

**Breach by the INEDs**

The LRC found that the INEDs breached Rule 3.08(f) for failing to take adequate steps or implement effective risk management and internal control procedures to monitor the operations of the JV or safeguard its assets:

- (a) The INEDs were members of the Company's audit committee with Mr Tam as its chairman. The functions of the audit committee included, among other things, the review and supervision of the financial reporting process and internal control procedures of the Company. The INEDs brought with them considerable relevant experience and knowledge which should have enabled them to assess the affairs of the Company reasonably accurately.

- (b) The LRC accepted that the INEDs did not have knowledge of the Historical Arrangement prior to the completion of the Acquisition. However, they were made aware of this at the first audit committee meeting after the completion of the Acquisition held in August 2014.
- (c) Both the existence of the Historical Arrangement and the fact that the amounts diverted from the JV to the JV Partner were significant (as shown in the accounts of the JV provided to the INEDs as members of the audit committee) should have caused the INEDs to address the issue as a matter of urgency, to take steps to bring this to the attention of the full board and to take immediate action to protect the Company's investment in the JV.
- (d) The LRC noted the INEDs' explanation that they did bring this matter to the attention of the board as a whole. However, neither the Company's management nor the INEDs adequately addressed the Company's obvious lack of control over the cashflows of the JV and, without having made enquiries about the JV Partner, the INEDs did not appear to have any reason to believe that the JV Partner would be in a position to repay the substantial amounts which he had received from the JV. The inability of the Company to have any real oversight of the assets and cashflows of the JV, and the risk that the JV Partner would not repay the amounts owed to the JV, should have alerted the INEDs of the risk that the whole basis for making the investment in the JV (which was to provide the Company with a steady source of income) was compromised and of the need to take steps to safeguard the assets of the Company's investment in the JV.
- (e) The LRC considered the INEDs' failure to take adequate steps to ensure that the Company had adequate risk management and internal control systems in place in relation to the JV surprising in the circumstances, given the materiality of the investment in relation to the Company's consolidated tangible assets.
- (f) The LRC acknowledged that the INEDs were not responsible for the initial investment in the JV and any action that they may have taken might not have altered the final outcome. However, the LRC considered that this could not absolve the INEDs from their failure to take steps to ensure that the Company had adequate risk management and internal control systems in place in relation to the JV once they became aware of the issues.

### **EDs and INEDs – Breach of Undertaking**

By virtue of their breaches of Rule 3.08 as mentioned above, the Committee found that each of the EDs breached his Undertaking to comply to the best of his ability with the Exchange Listing Rules; and that Mr Li and Mr Liu also breached their Undertakings to use their best endeavours to procure the Company's compliance with the Exchange Listing Rules. The LRC considered that by virtue of

the breaches of Rule 3.08 as mentioned above, each of the INEDs breached his Undertaking to comply to the best of his ability with the Exchange Listing Rules.

## REGULATORY CONCERN

The Committee (or in the case of the INEDs, the LRC) viewed the breaches in this case serious:

- (a) The Company's failure to disclose the financial assistance and publish the Late Accounts in a timely manner deprived investors of their timely receipt of information relating to the Company for assessment of their investment decisions.
- (b) The Company failed to discover the non-receipt of rent to the Lessor, which subsequently gave rise to the Lawsuit and the loss of the JV's sub-leasing right.
- (c) The Company/EDs/INEDs placed over-reliance on the JV Partner to manage the JV, resulting in substantial receivables due from the JV Partner to the JV. The Company's monitoring of the JV's operations and affairs was insufficient and ineffective. The Committee particularly noted that:
  - (i) based on latest available information, the total amount owed by the JV Partner to the JV was significant, at least over RMB200 million;
  - (ii) investment in the JV is likely to be written off (though the recoverable amount for impairment purpose is not yet known); and
  - (iii) the prolonged period in which the Company failed to effectively monitor the JV.

## SANCTIONS

Having made the findings of breach stated above, and having concluded that the breaches were serious, the Committee (or, in the case of the INEDs, the LRC) decided to:

- (a) censure the Company for breaching Rules 13.13, 13.15, 13.46(2)(a), 13.48(1), 13.49(1), 13.49(6) and 14.34 of the Exchange Listing Rules;
- (b) censure each of Mr Lee, Mr Liu, Mr Chiu, Mr Li, Mr Lau, Mr Ng and Mr Tam for breaching Rule 3.08(f) and the Undertaking;
- (c) censure each of Mr Li and Mr Liu for further breaching Rule 3.08(a);

- (d) impose a public statement that, in the Exchange's opinion, by reason of the failure of Mr Li and Mr Liu to discharge their responsibilities under the Exchange Listing Rules, had they remained on the board of directors of the Company, their retention of office would have been prejudicial to the interests of investors;
- (e) Mr Ng and Mr Tam to (i) attend 24 hours of training on regulatory and legal topics including Exchange Listing Rule compliance (**Training A**). Training A must include four hours on directors' duties, to be provided by training providers approved by the Division and completed within 90 days from the decision letter of the Committee; and (ii) provide the Division with the training providers' written certification of full compliance within two weeks after Training A's completion;
- (f) as a pre-requisite of any future appointment as a director of any company listed or to be listed on the Exchange, Mr Lee, Mr Chiu and Mr Lau to attend 24 hours of training on regulatory and legal topics including Exchange Listing Rule compliance (**Training B**). Training B must include four hours on directors' duties, to be provided by training providers approved by the Division. Training B is to be completed, and training providers' written certification of full compliance is to be provided to the Division before the effective date of any such appointment; and
- (g) following the publication of this Statement of Disciplinary Action, any changes necessary and any administrative matters which may emerge in the management and operation of the directions set out in paragraphs (e) and (f) above are to be directed to the Division for consideration and approval. The Division should refer any matters of concern to the Committee on review for determination.

Hong Kong, 26 May 2021