

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

Exchange's Disciplinary Action against Coolpad Group Limited (Stock Code: 2369) and Six Former Directors

This case involves a public statement that the retention of office by two former directors would have been prejudicial to the interests of investors had they remained on the board of directors.

Executive directors should take proactive steps to procure the issuer's Exchange Listing Rule compliance and keep all members of the board of directors informed. Failure to do so may amount to breach of director's duties under the Exchange Listing Rules.

Directors must ensure that listed issuers implement and maintain an effective internal control system for procuring Exchange Listing Rule compliance. Failure to do so may amount to breach of their director's undertaking to the Exchange.

The Stock Exchange of Hong Kong Limited (Exchange)

CENSURES:

- (1) **Coolpad Group Limited (Company)** (Stock Code: 2369), and together with its subsidiaries, **Group**) for breaching Rules 13.13, 13.46, 13.48, 13.49 and 14.34 of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (**Listing Rules**) for failing to comply with the requirements on advance to entity, financial assistance and financial reporting as a result of three series of transactions identified below;
- (2) **Mr Jia Yue Ting (Mr Jia)**, former executive director (**ED**) and the Chairman (**Chairman**) of the Company;
- (3) **Mr Jiang Chao (Mr Jiang)**, former ED and Chief Financial Officer (**CFO**) of the Company;
- (4) **Mr Li Bin (Mr Li)**, former ED of the Company;
- (5) **Mr Zhang Wei (Mr Zhang)**, former ED of the Company;

.../2

- (6) **Mr Liu Hong (Mr H Liu)**, former ED of the Company; and
- (7) **Mr. Liu Jiang Feng (Mr JF Liu)**, former ED and CEO of the Company;

for breaching their directors' duties under Rule 3.08 and/or their obligations under the Declarations and Undertakings with regard to Directors given to the Exchange in the form set out in Appendix 5B to the Exchange Listing Rules (**Undertakings**), including the undertaking to comply with the Exchange Listing Rules to the best of their ability (**Best Ability Undertaking**), the undertaking to use their best endeavours to procure the Company's Exchange Listing Rule compliance (**Best Endeavours Undertaking**), and the undertaking to cooperate with the investigation (**Undertaking to Cooperate**) of the Listing Division (**Division**).

(The directors identified at (2) to (7) above are collectively referred to as **Relevant Directors**.)

AND STATES that in the Exchange's opinion, had Mr Jia and Mr Jiang remained on the board of directors of the Company (**Board**), their retention of office would have been prejudicial to the interests of investors.

For the avoidance of doubt, the Exchange confirms that the sanctions and directions in this Statement of Disciplinary Action apply only to the Company and the Relevant Directors, and not to any other past or present members of the Board.

HEARINGS

On 3 November 2020, the Listing Committee of the Exchange (**Listing Committee**) conducted a hearing into the conduct of the Company and the Relevant Directors in relation to their obligations under the Exchange Listing Rules and the Undertakings.

On 4 June 2021, the Listing Review Committee (**LRC**) conducted a hearing of the review application of Mr Jia with respect to the findings of breaches and sanctions imposed by the Listing Committee.

SUMMARY OF FACTS

Group 1 Transactions

Mr Jia held 92.1 per cent equity interest in, and was the controlling shareholder of, Leshi Holding (Beijing) Co., Ltd. (**Leshi Holding**, and together with its subsidiaries, **Leshi Group**) at the material time. He was also the executive director of Leshi Holding. At the same time, Mr Jia indirectly held approximately 28.83 per cent of the Company's shares.

On 1 July 2016, Mr Jia represented Leshi Holding to enter into a loan agreement (**Loan Agreement**) with a lender (**Lender**) in order to borrow RMB1.2 billion (by issuing certain bonds).

On 10 August and 1 September 2016, the Company entered into two investment agreements (**Investment Agreements**) (procured and approved by Mr Jia) with an agent (**Agent**) under which the Company paid a total sum of USD120 million to the Agent as prepayments (**Prepayments**). The Prepayments exceeded 8 per cent and 13.1 per cent under the respective asset ratio and consideration ratio. Under the Investment Agreements, the Agent agreed to help the Company procure an acquisition of a certain shareholding in a target company which engaged in advanced automobile business, and was required to return the Prepayments by certain specific dates together with a fee of 10 per cent per annum (**Fee**) if the Agent failed to secure the acquisition by those dates. The purported acquisition did not take place by those dates.

On 5 January 2017, the Company entered into a repayment agreement (**Repayment Agreement**) with the Agent agreeing to extend the time for the return of the prepayments and the Fee to 31 March 2017.

Group 2 Transaction

On 20 December 2016, a subsidiary of the Company (**Subsidiary**) entered into a sale and purchase agreement with a supplier of touch screen display modules. The Subsidiary paid RMB300 million purportedly as “money on account” (**Money on Account**) to the supplier without any order or delivery. The agreement was terminated in mid-January 2017. The Money on Account was returned to the Subsidiary in three tranches (each in RMB100 million) on 17 February, 10 and 14 March 2017 respectively. The Company further received an additional amount of RMB5.94 million purportedly as “liquidated damages” from the supplier. The supplier and the Borrowers in the Group 3 Transactions were ultimately owned by the same individual who, according to the Company’s submission, was acquainted with Mr Jia and Mr H Liu. The consideration ratio in respect of the transaction was 7.19 per cent.

Group 3 Transactions

On 20 and 28 March 2017, the Subsidiary lent a total sum of RMB240 million (**Loans**) to three borrowers (**Borrowers**). The Borrowers were related to one another as they were all under the control of the same ultimate beneficial owner who was also the controller of the supplier in the Group 2 Transaction.

The Loans were for a term of three months with an interest rate of 10 per cent per annum. The aggregated consideration ratio in respect of the Loans was 7.58 per cent.

Delay in announcing the Transactions

The Company did not announce the Group 1 to 3 Transactions (collectively, **Transactions**) until 23 May 2017.

Late financial reporting

The Company's auditors queried the Transactions, which led to a delay in publishing four sets of the Company's financial results and reports from the end of 2016 to the half year of 2018. Details of the late financial reporting:

<u>Financial results/reports</u>	<u>Publication deadlines</u>	<u>Publication dates</u>	<u>Length of delay</u>
2016	31 March & 30 April 2017	3 April & 18 April 2018	About 1 year
2017 half-year	30 September & 31 October 2017	5 & 10 December 2018	Over 1 year 1 month
2017	31 March & 30 April 2018	5 & 10 December 2018	Over 7 months
2018 half-year	30 September & 31 October 2018	31 March & 17 April 2019	Over 5 months

Trading of the Company's shares was suspended from 31 March 2017 to 18 July 2019 (approximately two years and three and a half months).

EXCHANGE LISTING RULE REQUIREMENTS

Rule 13.13 requires issuers to announce as soon as reasonably practicable details of any advance to an entity which exceeds 8 per cent under the assets ratio. Rule 13.11(2)(c) defines "advance to an entity" as the aggregated amount due from and all guarantees given on behalf of an entity and the entity's subsidiaries.

Rule 14.34 requires issuers to announce discloseable transactions. A "transaction" is defined under 14.04(1)(e) to include, among others, providing financial assistance by an issuer unless they fall within any of the exemptions thereunder.

Rules 13.46, 13.48 and 13.49 require issuers to:

- (i) publish their interim results and send the interim report to shareholders not later than two and three months respectively after the end of the interim period; and
- (ii) publish their annual results and send the annual report to shareholders not later than three and four months respectively after the end of the annual period.

Rule 3.08 provides that directors of listed issuers must, amongst other matters:

- (i) act honestly and in good faith in the interests of the company as a whole (Rule 3.08(a));

- (ii) act for proper purpose (Rule 3.08(b));
- (iii) 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)); and
- (iv) take an active interest in the issuer's affairs and must follow up anything untoward that comes to his attention.

In addition, the Relevant Directors were obliged, under their respective Undertakings, to comply with the Best Ability Undertaking, the Best Endeavours Undertaking, and the Undertaking to Cooperate.

LISTING COMMITTEE'S FINDINGS OF BREACH

Mr Zhang and Mr JF Liu did not file any submission nor attend the hearing. The Listing Committee considered the written and/or oral submissions of the Division, the Company and the other Relevant Directors, and concluded as follows:

Company's breaches

The Listing Committee found that the Company breached Rules 13.13, 13.46, 13.48, 13.49 and 14.34 for the following reasons:

Group 1 Transactions

In view of the evidence available and the circumstances, the Listing Committee concluded that the Investment Agreements were not agency agreements arising in the ordinary and usual course of business. Particularly, the Agent was required to pay the Fee which was more akin to an interest charge. The transactions were designed to channel the Prepayments to the Leshi Group to discharge the Lender's obligation under the Loan Agreement. The Listing Committee concluded that the Investment Agreements (in aggregate) amounted to an "advance to an entity" under Rule 13.13 and "financial assistance" under Rule 14.04(1)(e). The size test results exceeded the relevant thresholds under the Rules. The Repayment Agreement also amounted to an "advance to an entity" and "financial assistance".

The Company was required to announce the Investment Agreements and the Repayment Agreement on 1 September 2016 and 5 January 2017 respectively, but it only did so on 23 May 2017. The Listing Committee concluded that the Company breached the disclosure requirements under Rules 13.13 and 14.34 in relation to the Group 1 Transactions.

Group 2 Transaction

While the term of the sale and purchase agreement was for a period of three months only, it was terminated within a month. The Subsidiary paid the Money on Account as purchaser without making any order or receiving any delivery. The Money on Account was not fully returned to the Subsidiary immediately after termination but after two months. The Company further received an additional amount of RMB5.94 million purportedly as “liquidated damages” from the supplier. The supplier and the Borrowers in the Group 3 Transactions were ultimately owned by the same individual who, according to the Company’s submission, was acquainted with Mr Jia and Mr H Liu. The Listing Committee concluded that the sale and purchase agreement was in substance a provision of financial assistance to the supplier. As the consideration ratio was 7.19 per cent, it constituted a discloseable transaction. The Company was required to announce the agreement on 20 December 2016, but only did so on 23 May 2017. The Company therefore breached the announcement requirement under Rule 14.34.

Group 3 Transactions

The Company admitted that the Loans should have been aggregated for the size test purpose as the Borrowers were related to one another under the control of the same ultimate beneficial owner who was also the controller of the supplier in the Group 2 Transaction. Based on the size test results, the Group 3 Transactions were subject to the Rule 14.34 announcement requirement. The Company was required to announce the Loans on 28 March 2017, but only did so on 23 May 2017 and, therefore, breached that Rule.

Late financial reporting

As a result of the Company’s delay in publishing the four relevant sets of its financial results and report, the Listing Committee concluded that the Company breached Rules 13.46, 13.48 and 13.49.

Internal control deficiencies

The Company had:

- (a) An “Information Disclosure Management System” manual (**Disclosure Manual**) governing disclosure of inside information and information required to be disclosed by regulators including, among others, notifiable transactions.
- (b) A procedural manual namely “Administrative Rules on the Examination and Approval of Financial Matters” (**Financial Rules**) governing, among others, procurement-related payments.

The Listing Committee found that the Company did not have adequate internal controls with respect to compliance with Rule 13.13 and Chapter 14 of the Exchange Listing Rules which contributed to the Company’s breaches set out above:

- (a) As the Company determined that the Groups 1 and 2 Transactions were not notifiable transactions, and that the Group 3 Transactions were not aggregated and each of them did not exceed the disclosure threshold for notifiable transactions, those transactions were not reported to the Board under the Disclosure Manual;
- (b) Further, one individual director (who was in the capacity of CEO) had complete control without a clear check-and-balance framework over the payment approval process. The director in the capacity of CEO had the authority to approve payments over RMB10 million (without upper limit) under the Financial Rules without reporting to, or seeking approval from, the Board, including those made under the Transactions in particular the significant Prepayments (USD120 million) and the Money on Account (RMB300 million); and
- (c) There were insufficient measures in the internal control system to ensure that payments could only be made after the Financial Rules were fully complied with or that transactions of such significance be brought to the Board for approval. The Money on Account and the Loans originally required approvals from the CFO and the CEO under the Financial Rules but in fact the Money on Account was paid without the CFO's approval, and the Loans were made without the CEO's approval.

Relevant Directors' breaches

The Listing Committee (and the LRC with respect to Mr Jia) concluded that the Relevant Directors have failed to discharge their duties under Rule 3.08, failed to comply with the Best Ability Undertaking and/or the Best Endeavours Undertaking.

Mr Jia (Chairman and ED)

Group 1 Transactions

Mr Jia signed the Loan Agreement on behalf of Leshi Holding to borrow RMB1.2 billion. He then procured and approved the Company to enter into the Investment Agreements and make the Prepayments to the Agent.

As stated above, Mr Jia was the controlling shareholder and executive director of Leshi Holding at the material time.

In view of the circumstances including Mr Jia's dominant role in the Leshi Group, Mr Jia should have been aware that the purpose of the Group 1 Transactions was to provide funds to the Leshi Group through the Agent and the Lender. However, he failed to:

- (a) comply with the Disclosure Manual to identify (with or without seeking professional advice) the Rule implications of the Group 1 Transactions (in particular the Investment Agreements and the Repayment Agreement) and report them to the Board for consideration and discussion;

- (b) bring the transactions to the attention of the other Board members and keep them informed; and
- (c) procure the Company to comply with the Rules on “advance to entity” and “financial assistance”.

Group 3 Transactions

Mr Jia approved the Loans, and was aware that the Borrowers were related to one another. He failed to disclose the Borrowers’ inter-relationship to the Company and take steps to procure the Company to comply with the Rules on “financial assistance”.

The LRC concluded that Mr Jia breached his director’s duties under Rules 3.08(a), (b) and (f), and therefore his Best Ability Undertaking.

Mr Jiang (ED and CFO)

Group 1 Transactions

Mr Jiang signed the Investment Agreements on behalf of the Company and approved the Prepayments upon Mr Jia’s approval. He also approved the Repayment Agreement.

Group 3 Transactions

He approved two of the Loans and authorised the payments.

Although Mr Jiang submitted that he was acting upon Mr Jia’s instructions, the Listing Committee concluded that he should have raised questions relating to those transactions in view of the circumstances, and escalated the matters to the Board for discussion (both generally and in accordance with the Disclosure Manual). The Listing Committee concluded that he breached his director’s duties under Rules 3.08(a), (b) and (f) and, therefore, his Best Ability Undertaking.

Mr Zhang (ED)

Group 3 Transactions

Mr Zhang approved the Loans. He should have raised questions relating to the Loans in view of the circumstances including the connection among the Borrowers and the supplier in the Group 2 Transaction, especially as the Borrowers were introduced by Mr Jia and Mr H Liu, and he should have escalated the matters to the Board for discussion (both generally and based on the Disclosure Manual). However, he failed to do so. He has also failed to take steps to procure the Company’s Rule compliance regarding “financial assistance”.

The Listing Committee concluded that he breached the director's duties under Rule 3.08(f) and, therefore, his Best Ability Undertaking.

Mr JF Liu (ED and CEO)

Group 2 Transaction

Mr JF Liu approved the payment of the Money on Account without complying with the Company's procurement policy requirements. In view of the circumstances surrounding the Group 2 Transaction, Mr JF Liu failed to:

- (a) comply with the Disclosure Manual to identify (with or without seeking professional advice) the Rule implications of the Group 2 Transaction and report it to the Board for consideration and discussion, or at least bring the transaction to the attention of the other Board members and keep them informed; and
- (b) procure the Company to comply with the Rules on "financial assistance".

The Listing Committee concluded that Mr JF Liu breached his director's duties under Rule 3.08(f) and, therefore, his Best Ability Undertaking.

All Relevant Directors (except Mr JF Liu and Mr Zhang)

Notwithstanding the Board's confirmation in the Company's annual report for the year ended 31 December 2015 that it had reviewed and was satisfied with the effectiveness of the Group's internal controls, the Listing Committee referred to the materiality of the Company's internal control deficiencies identified above. The Listing Committee (and the LRC with respect to Mr Jia) concluded that, by failing to ensure that the Group implemented an effective internal control system on Exchange Listing Rule compliance and risk management, which contributed to the Company's Rule breaches, the Relevant Directors (except Mr JF Liu and Mr Zhang who were appointed to the Board on 16 August 2016 and 20 March 2017 respectively) breached the Best Endeavours Undertakings to procure the Company's compliance with Rules 13.13 and 14.34 and the financial reporting obligations.

Mr H Liu (NED) and Mr JF Liu (ED and CEO)

As Mr JF Liu and Mr H Liu failed to respond to the Division's investigation in respect of the Transactions, the Listing Committee concluded that they breached their Undertakings to Cooperate.

REGULATORY CONCERN

The Listing Committee (and the LRC with respect to Mr Jia) regards the breaches in this matter as serious:

- (1) The failure by Mr Jia and Mr Jiang to discharge their responsibilities under Rule 3.08 was wilful and/or persistent in the light of, among other things, the following circumstances:
 - (i) Mr Jia paid no regard to the corporate governance processes of the Company and the Exchange Listing Rules. He should have been aware that the purpose of the Group 1 Transactions was to provide funds to the Leshi Group through the Agent and the Lender. However, he failed to take steps at least to comply with the Disclosure Manual and bring the matter to the Board's attention. He therefore breached his director's duties under Rule 3.08. About seven months later, whilst he was aware that the Borrowers in the Group 3 Transactions were related to each other, he nevertheless approved the Loans without disclosing the information to the Company which constituted a breach of Rule 3.08 again. He approved those transactions without dealing with the possible Rule implications, such as seeking professional advice beforehand.
 - (ii) Mr Jiang's conduct in the Group 1 and 3 Transactions shows that he persistently failed to exercise his independent judgement as an ED in approving the transactions and the relevant payments, or he turned a blind eye to the potential Rule implications arising from those transactions due to Mr Jia's instructions. Mr Jiang was also publicly censured by the Listing Committee in 2010 as a result of the Company's failure to publish a profit warning announcement in a timely manner.
- (2) The financial exposure and risk undertaken by the Group under the Transactions was significantly high. The Prepayments were unsecure and equal to approximately 12 per cent of the Company's market capitalisation at the time of payment.
- (3) There were material deficiencies in the Company's internal controls for procuring the Company's Rule compliance, which contributed to the Company's breaches.
- (4) The interest of the Company's shareholders had been prejudiced in terms of their right to timely receipt of information concerning the Transactions and the financial information of the Group during the period from 2016 to the first half of 2018.
- (5) Directors of listed issuers have an obligation to ensure that listed issuers notify the shareholders (and obtain their approval if required) and the market of advances and/or transactions falling within the scope of Rule 13.13 and Chapter 14 as soon as reasonably practicable. Failure to do so destroys transparency, trust and confidence in the market.
- (6) The Company's and the Relevant Directors' compliance history - In December 2010, the Company was publicly censured for its failure to publish a profit warning announcement in a timely manner. As a result, Mr Jiang was publicly censured.

SANCTIONS

Having made the findings of breaches stated above, the Listing Committee (and the LRC with respect to Mr Jia) decided to:

- (1) Censure the Company for its breaches of Rules 13.13, 13.46, 13.48, 13.49 and 14.34;
- (2) Censure Mr Jia (former ED and Chairman) and Mr Jiang (former ED and CFO) for breaching Rules 3.08(a), (b) and (f), their Best Ability Undertakings and Best Endeavours Undertakings;
- (3) Censure Mr Zhang (former ED) for breaching Rule 3.08(f) and the Best Ability Undertakings;
- (4) Censure Mr JF Liu (former ED and CEO) for breaching Rule 3.08(f), the Best Ability Undertaking and the Undertaking to Cooperate;
- (5) Censure Mr H Liu (former ED) for breaching the Best Endeavours Undertaking and the Undertaking to Cooperate;
- (6) Censure Mr Li (former ED) for breaching his Best Endeavours Undertakings; and
- (7) Make a public statement that in the Exchange's opinion, had Mr Jia and Mr Jiang remained on the Board, their retention of office would have been prejudicial to the interests of investors.

The Listing Committee further directed:

Director training

- (8) As a pre-requisite of any future appointment as a director of any company listed on the Exchange, each of Mr Li, Mr Zhang, Mr H Liu and Mr JF Liu, who are not currently directors of any other company listed on the Exchange, (a) to attend 24 hours of training on Exchange Listing Rule compliance and director's duties, including at least 6 hours of training on the requirements under the Exchange Listing Rules in respect of director's duties, corporate governance and Chapter 13, and 4 hours on notifiable transactions under Chapter 14 (**Training**), to be provided by institutions such as the Hong Kong Institute of Chartered Secretaries, the Hong Kong Institute of Directors or other course providers approved by the Division, which is to be completed before the effective date of any such appointment; and (b) to provide the Division with the training provider's written certification of full compliance;

- (9) 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 any of the directions set out in paragraph (8) above to be directed to the Division for consideration and approval. The Division should refer any matters of concern to the Listing Committee for determination.

Hong Kong, 24 August 2021