



## **THE STOCK EXCHANGE OF HONG KONG LIMITED**

(A wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited)  
(the “Exchange”)

18 December 2013

**The Listing Committee of The Stock Exchange of Hong Kong Limited (the “Listing Committee”) censures Besunyen Holdings Company Limited (the “Company”) (Stock Code: 926) for breaching Rule 13.09(1) of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the “Listing Rules”).**

**The Listing Committee further censures two current executive directors of the Company (collectively, the “Relevant Directors”):**

- (1) Mr Zhao Yi Hong (“Mr Zhao”), the Chairman of the Company; and**
- (2) Ms Gao Yan (“Ms Gao”), the Vice Chairman of the Company**

**for their respective breaches of their obligations under the Declaration and Undertaking with regard to Directors given to the Exchange in the form set out in Appendix 5 Form B to the Listing Rules in failing to use their best endeavours to procure the Company’s Listing Rule compliance (the “Undertaking”).**

### **Facts**

The Company was listed on the Exchange on 29 September 2010. The Group was profit-making from FY2007 to FY2010 and for the six months ended 30 June 2011 (“1H2011”). The Company’s 1H2011 results announcement dated 19 August 2011, which was preceded by a positive profit alert dated 11 August 2011, reported a turnover of RMB512.3 million and net profit of RMB113.3 million, an increase of 39.0 per cent and 436.9 per cent respectively over the corresponding period in FY2010.

There were two analyst reports issued in March and June 2011 which estimated the Company’s FY2011 revenue and net profit to be in the range of RMB1,152 million to RMB1,181 million and approximately RMB267 million respectively.

The Company's financial performance deteriorated significantly during the six months ended 31 December 2011 ("2H2011") (the "Deterioration") compared to the corresponding period in FY2010 and the budget which was prepared in late 2010 and approved at a Board meeting on 11 March 2011 (the "Budget"), the principal purpose of which was to formulate future sales and operation strategies and policies of the Group.

Since September 2011, the monthly management accounts of the Company's major PRC subsidiaries (i.e. excluding four overseas companies and a PRC subsidiary) (the "Monthly Management Accounts"), which substantially represent the Group's financial position, had been recording a significant drop in net profit compared to the corresponding period in FY2010 and the Budget.

The summary monthly management accounts, which were prepared based on the Monthly Management Accounts, contained information on key items of the income statement including year-to-date ("YTD") and monthly figures of net sales, cost of sales, gross profit, gross profit margin, selling and administrative expenses, net profit, and the comparison of those YTD figures with the Budget and last year's YTD figures (the "Summary Monthly Management Accounts") and were typically available approximately 10 working days after each month end, also recorded the Deterioration. The Summary Monthly Management Accounts were presented to the Relevant Directors and the Company's senior management, including the then CFO (the "Senior Management"), at the monthly management meetings (the "Monthly Management Meetings") which would be held approximately 8 to 12 days after the previous month end.

The table below sets out the key items in the Summary Monthly Management Accounts (cumulative figures) from July to November 2011. As the Company did not prepare Summary Monthly Management Accounts for December 2011, the figures shown in the second last column (from the right) of the table are based on the FY2011 estimated annual results (prepared based on the actual figures for the first 11 months and the estimated figures for December in FY2011) contained in the information package sent to the Board members on 16 December 2011. The figures shown in the last column (from the right) of the table for December 2011 are based on the unaudited FY2011 consolidated management accounts of the Company's major PRC subsidiaries (the "Preliminary Management Accounts") which were tabled during a special management meeting held on 5 January 2012 (the "Special Management Meeting").

(RMB' 000)	1H2011	Jul	Aug	Sep	Oct	Nov	Dec	Dec
<b>Revenue</b>	<b>512,324</b>	<b>567,615</b>	<b>636,214</b>	<b>691,189</b>	<b>769,798</b>	<b>820,311</b>	<b>909,985</b>	<b>840,601</b>
<i>vs Budget</i>	+1%	-5%	-11%	-17%	-17%	-21%	-22%	-28%
<i>vs FY2010</i>	+39%	+35%	+28%	+19%	+16%	+13%	+4%	-4%
<b>Gross profit</b>	<b>459,759</b>	<b>508,746</b>	<b>568,723</b>	<b>616,258</b>	<b>684,050</b>	<b>726,543</b>	<b>799,540</b>	<b>739,831</b>
Gross profit margin	89.7%	89.6%	89.4%	89.2%	88.9%	88.6%	87.9%	88.0%
<b>Net profit</b>	<b>128,920</b>	<b>129,404</b>	<b>132,113</b>	<b>112,280</b>	<b>103,535</b>	<b>82,913</b>	<b>38,508</b>	<b>3,390</b>
<i>vs Budget</i>	+53%	+39%	+16%	-22%	-41%	-61%	-86%	-99%
<i>vs FY2010</i>	+19%	+12%	-1%	-28%	-43%	-58%	-35%	-94%
Net profit margin	25.2%	22.8%	20.8%	16.2%	13.4%	10.1%	4.2%	0.4%
<b>Monthly net profit</b>	<b>N/A</b>	<b>484</b>	<b>2,709</b>	<b>(19,833)</b>	<b>(8,745)</b>	<b>(20,622)</b>	<b>(44,405)</b>	<b>(79,523)</b>

On 11 October 2011, the Summary Monthly Management Accounts for September 2011 were discussed at the Monthly Management Meeting. They showed the YTD net profit of RMB112.3 million (only 78 per cent of the Budget and 72 per cent of FY2010), net loss for the third quarter of 2011 (“**3Q2011**”) of RMB16.6 million and monthly net loss of RMB19.8 million.

On 12 November 2011, the October 2011 Summary Monthly Management Accounts were discussed at the Monthly Management Meeting. They showed that the YTD net profit was RMB103.5 million and was only 59 per cent of the Budget and 57 per cent of FY2010. Further, based on the Summary Monthly Management Accounts, the net loss from July to October was RMB25.4 million, a drop of 135.2 per cent from the same period in FY2010. Revenue for October 2011 was RMB78.6 million and was not in line with the revenue figures for 2Q2011. There was a further 2.8 per cent drop in net profit margin. The Company continued to incur a monthly net loss of RMB8.7 million.

On 12 December 2011, the November 2011 Summary Monthly Management Accounts were discussed at the Monthly Management Meeting. They showed that YTD net profit was RMB82.9 million and was only 39 per cent of the Budget and 42 per cent of FY2010. Further, the net loss from July to November was RMB46.0 million, a drop of 152.5 per cent from the same period in FY2010. This is the third consecutive month in 2H2011 in which the Company incurred a monthly net loss (RMB20.6 million in November 2011). Revenue for that month was RMB50.5 million and again was not in line with the revenue figures for 2Q2011. There was a further 3.3 per cent drop in net profit margin.

The FY2011 estimated annual results were made available to the Board on 16 December 2011. They recorded that the Group’s net loss for 2H2011 was RMB90.4 million, a drop of 170.1 per cent and 334.8 per cent from 1H2011 and 2H2010 respectively. The YTD net profit was RMB38.5 million and was only 14 per cent of the Budget and 65 per cent of FY2010. There was a further drop of 5.9 per cent in net profit margin from November 2011. The Company continued to incur a net loss in December 2011 (RMB44.4 million).

At the 20 December 2011 Board meeting, the Board discussed the possibility of the Deterioration and its Rule implications. After the Board meeting, the Company’s management, including Mr Zhao, verbally discussed the preparation of a draft profit warning announcement (“**PWA**”). A decision was made to withhold disclosing the Deterioration pending review of the Preliminary Management Accounts which would be available in early January 2012.

On 5 January 2012, the Special Management Meeting was held to review the Preliminary Management Accounts.

On 6 January 2012 (at 4:16 pm), the Company issued a PWA stating that it was “*expected that the turnover of the Group for [FY2011] would decrease marginally and the net profit of the Group would decrease significantly or turn into a marginal net loss*”, and that the changes were mainly attributable to the four factors mentioned in the PWA.

On 9 January 2012 (the next trading day), the closing price of the Company’s shares dropped approximately 32.8 per cent (from \$1.25 on 6 January 2012 to \$0.84). The trading volume increased to 39,213,400, which was 147.5 times the past 10-day average.

On 18 March 2012, the Company announced its FY2011 annual results which recorded revenue of RMB840.4 million, gross profit of RMB737.6 million and net loss of RMB40.9 million, a drop of 3.9 per cent, 5.8 per cent and 168.5 per cent respectively compared with FY2010.

### **Listing Rule requirements**

Unless otherwise stated, reference to Rule 13.09(1) in this press release refers to the Rule in force in 2011 and 2012.

Rule 13.09(1) required issuers to disclose, as soon as reasonably practicable, any information relating to the group which (a) is necessary to enable the Exchange, shareholders and the public to appraise the position of the group; (b) is necessary to avoid the establishment of a false market in the issuer's securities; or (c) might be reasonably expected materially to affect market activity in and the price of its securities.

Note 11(ii) to Rule 13.09(1) further elaborated that the disclosure obligation must be discharged without delay where to the knowledge of the directors, there is such a change in the issuer's financial condition or in the performance of its business or in the issuer's expectation of its performance that knowledge of the change is likely to lead to substantial movement in the price of its listed securities.

### **Allegations of breach by the Listing Division (the "Division")**

#### Company's breach of Rule 13.09(1)

The Division asserts that:

- (1) The Company was required but has failed to publish an announcement disclosing the Deterioration as soon as reasonably practicable in breach of Rule 13.09(1).
- (2) The Deterioration as reflected in the Summary Monthly Management Accounts described above was not information in the public domain, was outside market expectation, was information which fell within the ambit of Rules 13.09(1)(a) and (c), and required disclosure as soon as reasonably practicable under Rule 13.09. The Deterioration also indicated a change in the Company's business and financial performance which was likely to lead to substantial price movement, discloseable without delay under Note 11(ii) to Rule 13.09.

#### When Rule 13.09(1) obligation arose

The Division asserts that the Company's disclosure obligation arose on 11 October 2011 when the September 2011 Summary Monthly Management Accounts were discussed amongst the Relevant Directors and the Senior Management at the Monthly Management Meeting. Those accounts showed that:

- (1) The total revenue for 3Q2011 was RMB178.9 million, only 47.7 per cent of that for the second quarter of 2011 ("2Q2011") (RMB374.8 million), only 34.9 per cent of that for 1H2011 (RMB512.3 million) and dropped 14.8 per cent from that of 3Q2010 (RMB210.0 million).

- (2) The net loss for 3Q2011 was RMB16.6 million, a drop of 134.7 per cent and 115.1 per cent from the third quarter of 2010 (“3Q2010”) and 2Q2011 respectively based on the figures contained in the Summary Monthly Management Accounts from April to September 2011. Furthermore, the YTD net profit was 22 per cent and 28 per cent below the Budget and the corresponding period in FY2010 respectively.
- (3) There was a drop of 4.6 per cent of the net profit margin (20.8 per cent to 16.2 per cent) from August 2011.
- (4) The Company incurred a net loss of RMB19.8 million in September 2011.

The Division also asserts that, further or in the alternative, the disclosure obligation arose on the following dates:

- (1) 12 November 2011 when the October 2011 Summary Monthly Management Accounts were discussed at the Monthly Management Meeting.
- (2) 12 December 2011 when the November 2011 Summary Monthly Management Accounts were discussed at the Monthly Management Meeting.
- (3) 16 December 2011 when the FY2011 estimated annual results were made available to the Board.
- (4) In any event, by 20 December 2011 when the full Board discussed the FY2011 estimated annual results, the Deterioration and any Rule implications resulting from it.

It is the Division’s assertion that the Company’s disclosure of the Deterioration on 6 January 2012 was not made “*as soon as reasonably practicable*” and “*without delay*”, as required by Rule 13.09(1) and Note 11(ii) to the Rule.

#### Breach of Undertaking by the Relevant Directors

The Division also asserts that each of Mr Zhao and Ms Gao, being executive directors of the Company at the time, has breached his/her Undertaking to use his/her best endeavours to procure the Company’s compliance with Rule 13.09(1) for the following reasons:

- (1) Despite having knowledge of the Deterioration since 11 October 2011, they did not take steps to make the required disclosure of this information to shareholders and the investing public. They did not consider or discuss whether the matter was discloseable under Rule 13.09(1). Neither did they escalate the matter to the full Board for Rule 13.09(1) consideration, nor did they consult professional advisers on the Rule implications of the matter.

- (2) According to paragraph 3.1 of the Company's information disclosure policy, the senior management including the CFO and the Company Secretary, should compile draft regular reports which would be sent to the Directors and the Senior Management for review. Under that policy, the Chairman (Mr Zhao) should be responsible for convening Board meetings to review the regular reports. The Relevant Directors should therefore ensure that regular reports in respect of the Group's financial performance were compiled and sent to the Directors and the Senior Management for review. Mr Zhao (the Chairman) should have taken steps to convene Board meetings to review those reports. There is no evidence that they did so. A Board meeting to review the FY2011 estimated annual results was only held on 20 December 2011. Adherence to the Company's own internal policies would have been consistent with best endeavours. However, this does not appear to have been the case.
- (3) On 16 December 2011, the FY2011 estimated annual results were made available to the Board which clearly showed the Deterioration. Mr Zhao and Ms Gao did not take immediate action but chose to wait until the Board meeting was held on 20 December 2011.
- (4) At the 20 December 2011 Board meeting, the Board discussed the Deterioration and its Rule implications. After the Board meeting, management verbally discussed the preparation of a draft PWA. Although the FY2011 estimated annual results available to the Board on 16 December 2011 clearly showed the Deterioration, a decision was made to withhold disclosing the Deterioration pending review of the Preliminary Management Accounts which would be available in early January 2012. It was not until 6 January 2012 that the PWA was eventually published. The Relevant Directors therefore did not act expeditiously to issue the PWA given their knowledge of the facts concerning the Company's performance. They did not take proactive steps to ensure that a PWA was made as soon as reasonably practicable and without delay, as required by Rule 13.09(1) and Note 11(ii) to the Rule.

## **Settlement**

As a consequence of a settlement, the Company and the Relevant Directors do not contest the breaches asserted by the Division above and accept the sanctions and directions imposed on them by the Listing Committee as set out below.

## **Findings of breach by the Listing Committee**

On the basis of the facts and circumstances and with the Company and the Relevant Directors not contesting the Division's assertion of breaches, the Listing Committee finds that:

- (1) the Company breached Rule 13.09(1) of the Listing Rules; and
- (2) each of the Relevant Directors breached his/her Undertaking to the Exchange.

## Regulatory Concern

The Listing Committee would stress that the Hong Kong securities market is disclosure based. Investors and shareholders rely on information in the public domain to make their investment decisions. Timely disclosure by listed issuers of relevant information of their financial performance is thus crucial to enable shareholders and investors to make informed investment decisions. The Listing Committee notes with concern that:

- (1) Since September 2011, the Summary Monthly Management Accounts had been reporting a significant deterioration (year-over-year (“YOY”) 28 per cent to 58 per cent) in the Company’s business and financial performance. The Preliminary Management Accounts even showed a YOY 94 per cent deterioration of YTD profit.
- (2) At all relevant times, the Relevant Directors were aware of the Deterioration which had persisted during 2H2011. Despite the Relevant Directors’ knowledge and that there were at least five occasions when specific information clearly showing the Deterioration was made available to the Relevant Directors, they failed to take any action to disclose this information to shareholders and the investing public during 2H2011. Disclosure was made only after FY2011 on 6 January 2012.
- (3) There was a substantial delay of up to two months and 26 days in publishing the PWA on 6 January 2012. Those investors and shareholders of the Company who traded in the Company’s shares during this period did so without knowledge of the Deterioration. Shareholders and investors were deprived of their right to the timely receipt of crucial information relating to the Company and its performance.
- (4) The Company’s failure to disclose its Deterioration for this lengthy period of time, notwithstanding clear evidence available to the Relevant Directors in the form of the Summary Monthly Management Accounts, suggests:
  - (a) the Relevant Directors’ failure, collectively and individually, to understand the Company’s obligations; and
  - (b) at the very least the Relevant Directors’ demonstrated poor judgement and understanding of Rule 13.09 requirements and their obligations towards shareholders, investors and the wider market.
- (5) The Relevant Directors received training on directors’ responsibilities and continuing obligations of issuers under the Listing Rules from the Company’s legal advisers before the listing of the Company. Notwithstanding the training received, there was a serious breach of the Rules by the Company and a breach of the Directors’ Undertakings shortly after the Company was listed.
- (6) The Relevant Directors had little or no previous experience in managing a Hong Kong listed company. The Listing Committee expected that they would have taken advantage much more readily of the guidance and advice of the Company’s Compliance Adviser. However, the Company did not consult its Compliance Adviser and external professional advisers until 21 December 2011 when a draft PWA was provided to them for comments.

- (7) Further, the Listing Committee would have expected a reasonably prudent director in these circumstances to proactively seek advice and assistance from the Company's Compliance Adviser. However, the Relevant Directors did not do so and waited until almost the end of FY2011, which is certainly not an approach which, we believe, a prudent director of a newly listed company would have adopted in the circumstances.

The Listing Committee therefore considers that the breaches are serious warranting public sanctions and call for remedial actions to be taken by the Company and the Relevant Directors to improve compliance performance and culture.

In particular, with the inside information disclosure regime under the Securities and Futures Ordinance (the "SFO") becoming effective on 1 January 2013, it is crucial that the Company and its Directors are familiar with the requirements to ensure due compliance with the law, including the requirement to take all reasonable measures to ensure proper safeguards exist to prevent breaching the statutory disclosure obligation. The Listing Committee therefore regards the extension of the scope of the Directors' training to statutory inside information disclosure under the SFO appropriate.

### **Sanctions**

Accordingly, having made the findings of breach against the Company and each of the Relevant Directors stated above, the Listing Committee censures:

- (1) the Company for breaching Rule 13.09(1); and
- (2) Mr Zhao and Ms Gao for their respective breaches of the Undertaking.

Further, the Listing Committee directs as follows:

- (1) The Company appoint an independent Compliance Adviser (as defined in Chapter 3A of the Listing Rules namely, an entity licensed or registered under the Securities and Futures Ordinance for Type 6 regulated activity and permitted under its licence or certificate of registration to undertake work as a sponsor) satisfactory to the Listing Division on an ongoing basis for consultation on compliance with the Listing Rules for two years within two weeks from the publication of this Press Release. It is to submit the proposed scope of retainer to the Listing Division for comment before such appointment. The Compliance Adviser shall be accountable to the Company's Audit Committee.
- (2) Each of Mr Zhao and Ms Gao who are current executive directors of the Company, to undergo 24 hours of training on Listing Rule compliance, director's duties and corporate governance matters together with four hours on (a) current Rule 13.09 compliance and (b) inside information disclosure (under the SFO) (both effective on 1 January 2013) to be provided by the Hong Kong Institute of Chartered Secretaries, the Hong Kong Institute of Directors or other course providers approved by the Listing Division (the "**Training**"), within 90 days from the publication of this Press Release.

- (3) The Company provide the Listing Division with the course provider's written certification of full compliance with the Training within two weeks after completion of the Training at (2) above.
- (4) The Company publish an announcement to confirm that each of the directions in paragraphs (1) and (3) above has been fully complied with within two weeks after the respective fulfillment of each of those directions. The last announcement required to be published under this requirement is to include the confirmation that all directions in sub-paragraphs (1) to (3) above have been complied with.
- (5) The Company submit drafts of the announcements referred to in sub-paragraph (4) above for the Listing Division's comment, and may only publish the announcements after the Listing Division has confirmed it has no further comment on them.

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 past or present member of the Company's Board of Directors.